



Appeal Decision

Site visit made on 31 August 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Appeal Ref: APP/U1430/W/20/3265995

**Former Market Garden, Lower Waites Lane, Fairlight, East Sussex
TN35 4DB**

- 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 Gemselect Ltd against the decision of Rother District Council.
 - The application Ref RR/2017/457/P, dated 17 February 2017, was refused by notice dated 20 July 2020.
 - The development proposed is for the construction of 16 houses together with associated parking, access and wildlife area.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 16 houses together with associated parking, access and wildlife area at Former Market Garden, Lower Waites Lane, Fairlight, East Sussex TN35 4DB in accordance with the terms of the application, Ref RR/2017/457/P, dated 17 February 2017, and the plans submitted with it, subject to the conditions set out in Annex A.

Application for costs

2. An application for costs was made by Gemselect Ltd against Rother District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. On 20 July 2021, the Government published its revised *National Planning Policy Framework* (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is such a material consideration where it is relevant to a planning application or appeal. I note however, in this case, that the main parties have made no further comments in respect of these changes.
4. I acknowledge the planning history related to the appeal site, including a permission dated 2018¹, after which the Rother District Council Development and Site Allocations Local Plan (DaSA) was adopted in December 2019. As such, in addition to Policies OSS4, SRM1 of the Rother Local Plan Core Strategy 2014 (RCS), the Council have relied upon Policies DHG7 and FAC1 of the DaSA within its Decision Notice related to this appeal.

¹ RR/2017/457/P

5. Planning obligations related to off-site road improvements at the junction of Lower Waites Lane and Smugglers Way and a reptile relocation site have been agreed by the main parties, and I note that signed copies of the obligations, dated 21 June 2021, have been submitted as part of this Appeal. These obligations would be necessary to make the development acceptable in planning terms and meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Nonetheless, the proposal was refused by the Council in a Decision Notice dated 20 July 2021 for the main issues set out below. I have proceeded accordingly.

Main Issues

6. The main issues are the effect of the proposal on:
- the character and appearance of the area,
 - the living conditions of future occupiers, and;
 - whether the proposal is in a suitable location for residential development.

Reasons

Character and appearance

7. The appeal site is an overgrown former horticultural market garden that is located at the junction between Lower Waites Lane and Smugglers Way in the settlement of Fairlight on a plot that slopes up towards the two-storey properties found on 'Fairlight Gardens'.
8. The immediate surrounding area is typified by varied styles of residential dwellings that face directly onto the highway along Lower Waites Lane, while the more contemporary properties on Smugglers Way and beyond are set back behind footways. The wider area is located near to fields and woodland and a mix of more contemporary style roads, rural type lanes and small unmarked paths that appear to lead towards the coastline.
9. The proposal is to construct 16 new dwellings to 'Nationally Described Space Standards' in traditional Sussex type materials on the appeal site. There would be on-plot parking as well as communal parking areas and garages. The development would also have a wildlife area adjacent to the dwellings on 'Fairlight Gardens' which would be connected to the appeal site by a bound gravel footway running along the shorter section of Lower Waites Lane.
10. The appeal site is allocated in the Council's DaSA for residential development, and is located in an area of diverse building types, ages and styles. For example, Lower Waites Lane has predominantly bungalow type dwellings along its course, while I noticed at my site visit that 'Fairlight Gardens' above the appeal site is a development that has two-storey dwellings. Indeed, this variation in the built environment is likely to result in fluctuations in density across the settlement of Fairlight.
11. As such, given the limits of the rising topography of the plot, the spread of the proposal would be a well thought-out and relatively spacious development with individual gardens that would not look out of place in the diverse built form surrounding the appeal site, and furthermore would be softened by the existing hedges and trees.

12. I acknowledge that the garden spaces associated with units 3, 5, 7, 9 and 11 might be less than ideal for some households with children and young people. However, while the surrounding area has limited formal public spaces, the location is nonetheless rich with opportunities to walk, play or appreciate the natural world in this semi-rural type location, including the nearby Fairlight Recreation Ground that can be reached by foot.
13. Therefore, while the Council contend that the lack of recreational space is an indicator of overdevelopment of the site I find to the contrary. Indeed, the proposed development would be sufficiently spacious to accommodate not only gardens to each dwelling, but also a generous wildlife area which would be likely to be enjoyed by younger and older age-groups alike.
14. Accordingly, in respect of the character and appearance of the area, the proposal meets the aims of Policy OSS4 (i), (iii), (iv) and (v) of the RCS which require that development respects and does not detract from the character and appearance of the locality, and Paragraph 130 of the Framework, which aims include that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Living conditions

15. The submitted drawings show that the proposed development would include rear gardens to all of the new dwellings. However, plots 3, 5, 7, 9 and 11 have gardens that have an approximate length of 7m, which is below the Council's desired minimum. Indeed, I appreciate that the garden space would not be attractive to every household, for example, families with children. Nevertheless, it may suit smaller households or couples, including older persons and those who find gardening a chore.
16. Moreover, although compact, and notwithstanding the sloping orientation, the gardens would nevertheless provide adequate separation distances between the surrounding dwellings, and would be useable for activities such as clothes drying, small-scale gardening, dining and sitting out. My opinion is reinforced by the example of the relatively small, but well-kept gardens, associated with the adjacent properties on 'Fairlight Gardens'.
17. In addition, the DaSA says that there are a number of considerations that may be taken into account in respect of any garden spaces provided as part of a development. In this case, given the recorded challenges to viability on the site, it is clear that the sloping site reduces opportunities to provide 10m gardens across the entirety of the site. Ultimately, it is a matter of choice for prospective occupiers and does not justify dismissal of the appeal.
18. Therefore, in respect of the living conditions of future occupiers, the proposal aligns with Policy DGH7 (i) of the DaSA, which says that appropriate and proportionate levels of private usable external space will be expected.
19. For similar reasons the proposal aligns with Paragraph 130 (f) of the Framework, which identifies that developments should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Suitable location

20. The proposed development would be arranged as a short 'hammer-head' cul-de-sac with an entrance rumble strip, that would have a combination of on-plot parking, garages and communal parking spaces set back directly from the highway. While there would be no footways within or directly connected to the site, save a small section of bound gravel footway that would run towards 'Fairlight Gardens', the roadside arrangement would be similar to the built environment found along Lower Waites Lane. Indeed, while the inclusion of electric-charging points would be likely to be desirable for some households, the exclusion of the charging points and absence of footways within the development, when considered against the aims of Policy SRM1 of the RCS, is not a reason to refuse the appeal in this specific case.
21. Moreover, even if footways were to be constructed within the cul-de-sac, it is likely, other than the most local of journeys by foot, that the residents would use a private motor vehicle to access the services and employment opportunities available in the larger settlements of Hastings and Rye in the same way as the occupants of the surrounding dwellings along Lower Waites Lane. As such, I conclude that any increase in reliance on private motor vehicles as a consequence of the development, which is not likely to be substantial given the limits of the proposal, would be outweighed by the social and economic benefits associated with the scheme, for example; road improvements at the junction of Lower Waites Lane and Smugglers Way, and the construction and provision of 16 new homes towards the Council's housing land supply.
22. Therefore, I find that the proposal meets the aims of Policies SRM1 of the RCS and the Framework when considered as a whole.

Other matters

23. Concerns were raised by an interested party about the access to the appeal site which is held as private land. However, private rights of access have no bearing on the consideration of planning applications. Indeed, the consideration of planning applications and appeals involves matters of planning judgement.
24. I acknowledge that there were a large number of representations, including a petition, from interested parties and Fairlight Parish Council in respect of the proposal, which in addition to the main issues included concerns related to; affordable housing and viability, consideration of other uses such as a community space, Japanese knotweed, highway safety, layout, appearance and views, parking, sewage, contamination, accessibility, lighting, trees and wildlife, flood risk, previous concerns for landslip and the construction period.
25. However, given my findings above, including consideration of the submitted technical evidence, the DaSA which was adopted in 2019, and the suggested conditions provided by the Council, I have found no justification to dismiss the Appeal or the benefits associated with the provision of 16 new dwellings.

Conditions

26. I have considered the Council's suggested conditions against Paragraph 55 of the Framework and the national 'Planning Practice Guidance' (PPG), and imposed the following conditions; for certainty a standard time limit condition and a condition requiring that the development is carried out in accordance with the approved plans.
27. Notwithstanding the signed planning obligations related to off-site road improvements at the junction of Lower Waites Lane and Smugglers Way and a reptile relocation site, for certainty I have included pre-commencement conditions to ensure the completion of the works and for the protection of wildlife. I have also included a condition to protect heritage assets and items of archaeological interest. There are also conditions related to a construction method statement including demolition and times of operation. This is imposed to ensure the amenity of the area and highway safety during construction. Conditions related to surface water drainage and sewerage have been included to protect the site from surface water and pollution run off.
28. It has also been necessary to impose pre-commencement conditions related to badgers and reptiles in order to ensure the protection of rare and protected species. Consolidated soft and hard landscaping, as well as trees and boundary conditions have been imposed to ensure the character and appearance of the area is maintained. Similarly, there is a materials condition to protect the character and appearance of the area, and a condition for the storage of refuse and recycling. To prevent light pollution, and in the interests of the living conditions of neighbouring occupiers, there is a lighting condition.
29. For highway and pedestrian safety, conditions have been included related to garaging, parking, turning and footways spaces. To encourage sustainable methods of transport a condition for cycle storage is needed.
30. I have included a condition that restricts future fences, gates or walls, buildings or structures to the front of the dwellings fronting the road in the interest of the character and appearance of the area.
31. To ensure that the dwellings are accessible to a range of occupiers there is a condition in respect of Part M4(2) (accessible and adaptable dwellings) of Schedule 1 of the Building Regulations 2010.
32. I have not imposed the suggested condition related to water usage as in respect of the purposes of the 'six tests' set out in Paragraph 55, as I have no evidence to suggest such a condition would be enforceable or that it is relevant to planning, rather a matter for other primary legislation.

Conclusions

33. For the reasons given above I conclude that the appeal should be allowed subject to the conditions set out in Annex A.

J E JOLLY

INSPECTOR

Annex A – Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - 662/002 P5 - Proposed Site Plan, dated 27 November 2017
 - 662/003 P5 - Proposed Site Plan, dated 27 November 2017
 - 662/004 P5 - Roof Plan, dated 27 November 2017
 - 662/006 P4 - Site Sections 1-4, dated 27 November 2017
 - 662/007 P3 - Site Sections 5-8, dated 8 August 2017
 - 662/008 P3 - Site Sections 9-12, dated 8 August 2017
 - 662/021 P2 - House Types 1,3,5,7,9 & 11, dated 6 July 2017
 - 662/022 P2 - House Types 13 & 15, dated 6 July 2017
 - 662/023 P2 - House Types 2,4,8 & 10, dated 6 July 2017
 - 662/024 P2 - House Type 6, dated 6 July 2017
 - 662/025 P2 - House Type 12, date 6 July 2017
 - 662/026 P2 - House Type 14, dated 6 July 2017
 - 662/027 P2 - House Types 16, dated 6 July 2017
 - 662/028 P3 - Bin Store 1, dated 8 August 2017
 - 662/029 P2 - Bin Store 2, dated 6 July 2017
 - 662/030 P2 - Detailed Section/Elevation
 - 662/031 P2 - 3D View, dated 8 August 2017
 - 662/303 P2 - Location Plan, dated 26 April 2017
 - 662/304 P4 - Site Location Plan, dated 27 November 2017
 - 8330P/301B - Surface Water Drainage Layout, dated 11 July 2017
 - 8330P/302B - Foul Water Drainage, dated 11 July 2017
 - 100 P2 - Proposed Carriageway and Access Alignment, 5 November 2007
 - Written Scheme of Archaeological Investigation (Chris Butler), dated June 2015
 - Drainage Strategy and Sustainable Drainage Management and Maintenance Plan (Issue B) - Monson, dated 11 July 2017
 - Arboricultural Report (Sylvan Arb) Ref SA/91/14, dated 27 June 2014
- 3) No development shall commence until the vehicular access serving the development and the improvements to Lower Waites lane and Smugglers Way have been constructed in accordance with the approved plan Drawing No 100 P2 dated 5 November 2007.

- 4) No development above ground floor slab level of any part of the development shall take place until a schedule of materials and finishes and colours to be used for external walls, windows and roofs of the approved building(s) has been submitted to and approved by the Local Planning Authority in writing and all materials used in the construction of the development shall conform to those approved.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities; and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
 - vi) details of public engagement both prior to and during construction works.
 - vii) measures to control the emission of dust and dirt during construction;
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - ix) details of access through the site during the construction period
 - x) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) Unless alternative times are specifically agreed in writing by the Local Planning Authority, construction activities associated with the development hereby permitted shall not be carried out other than between the hours of 08:00 and 18:00 hours on Mondays to Fridays inclusive and 08:00 and 13.00 on Saturdays and not at any time on Sundays, Bank and Public Holidays.
- 7) No development shall take place until a programme of archaeological work in accordance with a Written Scheme of Investigation that has been approved in writing by the planning authority.
- 8) No development shall take place other than in accordance with the Written Scheme of Archaeological Investigation approved under Condition 7.
- 9) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority and shall allow that person to observe the excavations and record items of interest and finds.

- 10) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority in consultation with Southern Water. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority in consultation with Southern Water.
- 12) No development above ground level shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design, height, materials and type of boundary treatment to be erected.
- 13) No development above ground level shall take place before any external lighting scheme proposed is submitted to and approved in writing by the Local Planning Authority.
- 14) No development shall take place until an ecological design strategy (EDS) addressing enhancement of the site for biodiversity has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include the following; a) Purpose and conservation objectives of the proposed works, b) Review of site potential and constraints, c) Detailed design(s) and/or working method(s) to achieve stated objectives, d) Extent and location/area of proposed works on appropriate scale maps and plans, e) Type and source of materials to be used where appropriate, e.g. native species of local provenance, f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development, g) Persons responsible for implementing the works, h) Details of initial aftercare and long-term maintenance, i) Details for monitoring and remedial measures, and j) Details for disposal of any wastes arising from the works. The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

- 15) No development shall take place (including any demolition, ground works, site clearance) until a method statement for the rescue and translocation of reptiles has been submitted to and approved in writing by the Local Planning Authority. The content of the method statement shall include the; a) Purpose and objectives of the proposed works, b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used), c) Extent and location of proposed works shown on appropriate scale maps and plans, d) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction, e) Persons responsible for implementing the works, f) Initial aftercare and long-term maintenance (where relevant), and g) Disposal of waste arising from works. The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.
- 16) No works which include the creation of trenches or culverts or the presence of pipes shall commence until measures to protect badgers from being trapped in open excavations and/or pipe and culverts are submitted to and approved in writing by the Local Planning Authority. The measures may include; a) creation of escape ramps for badgers, which may be achieved by edge profiling of trenches/excavations or by using planks placed into them at the end of each working day, and b) open pipework greater than 150 mm outside diameter being blanked off at the end of each working day.
- 17) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority, including indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 18) Prior to the occupation of the development, a landscape management plan, including management responsibilities and maintenance schedules for the communal hard and soft landscape areas including any street furniture and minor artefacts therein, shall be submitted to and approved by the Local Planning Authority.
- 19) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees, or plants which within a period of 5 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.

- 20) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars shall have effect until the expiration of five years from the date of the occupation of the building for its permitted use. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work). The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority. No fire shall be lit within 10m from the outside of the crown spread of any tree which is to be retained. No equipment, machinery or structure shall be attached to or supported by a retained tree. No mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area that seepage or displacement could cause them to enter a root protection area. No alterations or variations to the approved works or tree protection schemes shall be made without prior written consent of the Local Planning Authority.
- 21) No part of the development shall be occupied until full details of refuse and recycling storage facilities have first been submitted to and approved in writing and those facilities have been provided in accordance with the approved details.
- 22) No part of the development shall be occupied until the car parking spaces have been constructed and provided in accordance with drawing No 622/003 P5, dated 27 November 2017. The areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
- 23) No part of the development shall be occupied until the vehicle turning space has been constructed within the site in accordance with drawing No 622/003 P5 dated 27 November 2017. The space shall thereafter be retained at all times for this use only and shall not be obstructed.
- 24) No part of the development shall be occupied until the road, footways and parking areas serving the development have been constructed, drained and lit in accordance with plans and details that have first been submitted to and approved in writing by the Local Planning Authority.
- 25) No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved in writing by the Local Planning Authority and the areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.

- 26) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), the garages hereby approved shall retained for such use and shall not be altered internally or externally for use as habitable accommodation.
- 27) Notwithstanding the provisions of Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting this Order with or without modification), no fences, gates or walls, buildings or structures of any kind, shall be erected within the curtilage of any dwelling house forward of any wall of that dwelling house which fronts onto a road.
- 28) The dwelling(s) hereby permitted shall not be occupied until it they have been constructed in accordance with Part M4(2) (accessible and adaptable dwellings) of Schedule 1 of the Building Regulations 2010 (as amended) for access to and use of buildings.

*****End of Conditions*****