



Appeal Decision

Site visit made on 27 September 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/B1415/W/21/3285744

Land to the east of Harrow Lane and west of 777 and 779 The Ridge, St Leonards on Sea, Hastings TN37 7PT

- 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 Park Lane Homes Ltd against the decision of Hastings Borough Council.
 - The application Ref HS/FA/20/00970, dated 21 December 2020, was refused by notice dated 29 April 2021.
 - The development proposed is erection of 67 dwellings together with access, open space, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 67 dwellings together with access, open space, parking and landscaping at land to the east of Harrow Lane and west of 777 and 779 The Ridge, St Leonards on Sea, Hastings TN37 7PT in accordance with the terms of the application, Ref HS/FA/20/00970, dated 21 December 2020, subject to the conditions in the schedule below.

Application for Costs

2. An application for costs was made by Park Lane Homes Ltd against Hastings Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. An agreement under section 106 of the Town and Country Planning Act 1990 has been submitted with the appeal (the S106), signed 13 July 2022. I have had regard to this in reaching my decision.
4. The Hastings Local Plan Consultation Draft 2020/21 has been referred to by both of the main parties. This has not yet been through the examination process and does not form part of the adopted development plan.
5. During the course of the appeal, the main parties have reached agreement that the proposed scheme could not support an affordable housing contribution for viability reasons. As such, this matter is not in dispute. As the original viability report submitted with the application suggested no such contribution could be supported and, as the Council's Committee Report included the provision for negotiation on development viability, I have accepted this position.

Background

6. The site is allocated for housing under the Hastings Local Plan: Development Management Plan 2015 (the DMP) and Policy LRA3 of the DMP contains criteria to which development proposals for the site should adhere. The policy acknowledges a possible net capacity of 50 dwellings.
7. Outline planning permission was granted in May 2019 for 50 homes on the site¹. The site adjoins other parcels of land that are also allocated in the DMP and which have planning permission. This includes Holmhurst St Mary to the east, with planning permission for 208 homes, and Harrow Lane Playing Fields to the south with planning permission for 140 homes.
8. While still in draft form, Policy HL3 of the Hastings Local Plan Consultation Draft 2020/21 proposes to allocate the appeal site for provision of 98 homes and removes a requirement for open space within the site. However, based on the information before me, this emerging Local Plan is still in the early stages of its preparation and has not yet been submitted for independent examination. As such, I cannot be certain how far away the policy is from adoption or in what form it will be adopted post-examination. I can therefore afford this only limited weight.

Main Issue

9. The main issue is the effect of the development proposed on the character and appearance of the area.

Reasons

10. The appeal site comprises grassland bound by mature hedgerows and trees to all except its western edge. The site sits in an elevated position providing long reaching views to the north and west and the ground levels of the site slope steeply to the west, towards Harrow Lane. The site is one of a number of open spaces on the eastern side of Harrow Lane connected by public footpaths, and I note that planning permissions exist for housing on two of those parcels of land, as above.
11. The site is set close to the edge of the settlement, with open countryside prevailing on the northern side of The Ridge, which marks the boundary of the High Weald Area of Outstanding Natural Beauty. Distinct clusters of residential development exist off The Ridge close to the appeal site, including detached bungalows and two/three storey houses set around a cul-de-sac of Beulieu Gardens, and terraced and detached two storey properties off Eldridge Way to the east. To the north west of the site, north of the junction of The Ridge and Harrow Lane, a more dense pattern of residential development exists around Maplehurst Road, with properties set on smaller plots and close to the edge of the street, including rows of narrow terraced houses.
12. Directly opposite the appeal site on Harrow Lane is a group of detached properties comprising predominantly brickwork elevations and concrete roof tiles. These are set back from the road, often behind hedgerows, and are nestled into the hillside, in many cases having the appearance of bungalows in views from the road. The Memorial Hall and Convenience Store on Harrow Lane, which sit just outside the north western side of the appeal site are similarly set within the slopes of the land and differ again in their appearance and design. Further to the south, beyond the Harrow Recreation Ground, a vast

¹ ¹ Ref HS/OA/17/00645

area of residential development encompasses properties of varying scale, design and materials.

13. In light of these attributes, the area can be described as being of mixed character, with very little consistency in the character and appearance of properties, their plot sizes and relationships to the street. Instead, the area is characterised by groups of properties of distinct character which in turn contribute to a varied streetscape.
14. The proposed development would comprise a mix of semi detached houses, rows of terraced properties as well as a block containing flats, set around two streets with intervening open space and landscaping. Given the varied scale and nature of properties in the wider area, which the Council accept includes two storey dwellings and bungalows, the scale of the homes proposed would not be out of character with the wider area. While a block containing flats was not a typology seen during my site visit, given this is a two storey block with traditional sloped roof pitches, it would not appear overly large in this context.
15. To the western side of the site, two groups of terraces are proposed to provide a continuous frontage on Harrow Lane, either side of the site access. These properties would undoubtedly appear different to the properties opposite on Harrow Lane and would have narrower plot widths and be positioned on elevated ground. However, those existing properties opposite form only a component part of a much wider area of varied character. The proposed development fronting Harrow Lane would be set back from the edge of the road, with a building line that respects that of the existing hall and store to the north. The landscaping scheme would include hedging and trees on the edge of Harrow Lane, mirroring the hedgerows on the opposite side of the street and retaining a feeling of space and a verdant character to the site boundary. For these reasons, the juxtaposition of the properties opposite and the new development fronting Harrow Lane would not cause harm to the character of the area.
16. There would be a degree of visibility of the proposed development from the nearby public footpaths. However, for the reasons given above, in light of the varied nature of developments in the area, the visibility of the site would not amount to harm, and I do not have substantive evidence to suggest why this would be the case.
17. With regard to density, Policy LRA3 of the DMP contains a figure for the possible net capacity of the site, being 50 units. It does not set a maximum or a limit to the quantum of housing that should be provided on the site. Policy H1 of the Hastings Local Plan: Planning Strategy (the PS) requires residential development to make effective use of land and sets minimum densities for areas depending on the accessibility of the site to services and facilities. Even if the lower policy requirement were applied, this requires at least 30 dwellings per hectare. The proposed development adheres to this requirement though achieving 36 dwellings per hectare. I do not have substantive evidence before me to suggest that this density figure significantly exceeds the densities of the surrounding area. I note that the outline planning permission for the site, and the unit numbers referred to in the site allocation, would achieve only 27 dwellings per hectare, below the aspirations of the policy. Policy H1 identifies that particular site circumstances may justify different densities, however I do

not find that the circumstances of this particular site support a density lower than the policy requirement.

18. For the reasons given, the proposal would not conflict with Policy LRA3 of the DMP insofar as it relates to this main issue. The development would comply with the objectives of the National Planning Policy Framework (the Framework) at paragraph 130 insofar as it requires developments to be sympathetic to local character including the surrounding built environment, while not preventing or discouraging innovation or change, such as increased densities. Nor does it conflict with paragraph 134 of the Framework which relates to design quality.
19. The development would not conflict with the principles of the National Design Guide 2021 which provides guidance on understanding a site's local and wider context, nor the National Model Design Code 2021 which provides guidance on the production of design codes, guides and policies to promote successful design.
20. Insofar as this main issue is concerned, there is not conflict with the objectives of the Framework relating to promotion of sustainable transport.

Planning Obligations

21. Policy CI1 of the PS states that proposed development will mitigate inadequacies in infrastructure arising from the proposed development through appropriate provision or development contributions that will provide towards sufficient and appropriate improvement through upgrade, enhancement or new infrastructure. The East Sussex supplementary planning guidance 'A New Approach to Development Contributions', updated 2012 (the SPG) expands upon the specific infrastructure requirements for the area.
22. With regard to the provision of affordable housing, the Council accept that the development could not support a contribution to affordable housing in light of viability matters which have been discussed with the appellant. As such this matter is not in dispute. Policy H3e) of the PS supports the assessment of viability in considering an affordable housing contribution. However, it requires that a 'cascade' approach is followed through, for example, considering reductions in other planning contributions and other changes to the affordable housing offer, to make a site viable. I do not have evidence before me to suggest that this has taken place.
23. While I acknowledge that Policy H3 prioritises affordable housing contributions, given the other evidence relating to the need and reasons for other contributions, discussed in turn below, I am satisfied that those contributions outweigh the requirements of Policy H3 in this case.
24. The S106 includes a review mechanism for affordable housing at both early and late stages of the construction process. However, I do not have evidence before me of a policy nor other reason that would make this necessary to make the development acceptable in planning terms. As such, based on the evidence, it does not meet the tests for an obligation.
25. I have considered the other obligations contained in the S106 in light of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework, which set out the tests for planning obligations. Those relate to the following matters:

26. Libraries Contribution: The SPG identifies that improving library provision in Hastings is a high priority and the contribution is necessary to contribute towards additional library provision and more flexible library and information services to meet changing needs. The SPG quantifies the extent of the contribution required, with reference to floorspace standards for library provision, costs of construction, stocking and ICT equipment. In light of the evidence provided I am satisfied that this obligation meets all the relevant tests.
27. Rights of Way Contribution: The proposed development would increase pressure on the use of the nearby rights of way network, including those close to the appeal site, through increased use and footfall. The SPG details the formula by which such a contribution is calculated to upgrade the network. I am satisfied that the contribution meets the relevant tests.
28. Transport Contribution: In light of the extra pressure which the development would place on the local highway, including additional local footfall, the highways improvements required by the Council would be necessary. This includes a new crossing point on Harrow Lane and enhancements to The Ridge. The sum has been informed by the cost of the works anticipated by the Highways Authority and consequently this obligation meets the relevant tests. In addition, the S106 ensures that the appellant would enter into an agreement under section 278 of the Highways Act 1990 to ensure that the above necessary works are carried out by the Highways Authority and prior to occupation.
29. Traffic Regulation Order Costs: The Highways Authority have provided details of the necessity for these works to prevent parking outside the appeal site, around the point of access and the new crossing. Again, the sum is based on the costs provided by the Highways Authority and it meets the tests for a planning obligation.
30. Travel Plan Audit Fee: While some audit and monitoring of the travel plan would be necessary, I do not have evidence as to how the associated sum has been commuted and I cannot be satisfied that the fee is fairly and reasonably related in scale and kind to the development. Consequently, the payment of a fee for the auditing of the document does not meet the tests.
31. Open Space: Policy LRA3 of the PS requires the delivery of the proposed green space on the site. As the obligation secures its timely delivery and long term management, the obligation is necessary and meets the required tests.
32. Condition of Estate Roads: This obligation ensures that any roads within the development that were not adopted by the Highways Authority would be built to a suitable standard. While I appreciate the concerns which lead to the obligation, I have little evidence before me relating to the planning need for this obligation and I cannot be certain that it would meet the relevant tests in terms of being necessary to make the development acceptable in planning terms.
33. Taking the above matters into consideration, since the obligations relating to the travel plan audit fee, condition of the estate roads and the viability review fail to meet one or more of the tests set out in the CIL Regulation 122, I am unable to take them into account in determining the appeal. However, I am satisfied that those obligations relating to the libraries contribution, rights of

way contribution, transport contribution, traffic regulation order costs and open space meet the tests and as such I have taken those obligations into account in determining the appeal.

Other Matters

34. The Council accepts that it does not have a five year land supply for housing, and that it has under performed in the housing delivery test. As such the provisions of paragraph 11 of the Framework are applicable to the appeal. As I have found that the development accords with an up-to-date development plan, paragraph 11c) requires that development should be approved without delay. The presumption in favour of sustainable development weighs in favour of the development.
35. I have had regard to the other matters raised by third parties. While the existing open space provided by the site, in combination with others nearby, has been an important local attribute, it remains the case that the site is one allocated for housing in the Local Plan and one which has previously received outline planning permission for housing. For these reasons the proposed loss of the existing open space is acceptable. The appeal scheme would deliver a new open space in the centre of the site and would make a contribution towards the improvement of other public footpaths, therefore providing appropriate mitigation for the loss of the existing open space. While concerns have been raised about the adequacy of the new open space in terms of its ability to serve future occupiers, I note that it would benefit from natural surveillance from surrounding properties, and I have no reason to believe it would not be valuable to local residents including families. Alternative sites have been suggested that could instead accommodate new housing. However, my considerations relate to the appeal scheme before me and such considerations would form part of the Council's assessment of allocated sites.
36. The appeal scheme would deliver improvements to the nearby highways to accommodate additional vehicle and pedestrian movements, informed by the Highways Authority, and would encourage sustainable means of transport. I do not have substantive evidence before me to demonstrate that the cumulative impacts of the developments in the area on the road network would be severe. Neither do I have evidence that the impacts on air quality would be significant. The new access, together with the measures secured by the S106 would preserve highway safety. Given the distance and relationship of the proposed homes from the existing buildings on Harrow Lane, including the convenience store, any loss of privacy would not cause harm to the overall conditions experienced by users of those buildings.
37. The appeal scheme would address identified deficiencies in local infrastructure through financial contributions informed by the Council and County Council and their identified needs. Issues of flooding and drainage can be dealt with by the conditions below and I do not have substantive evidence to suggest that issues of land stability should withhold development.
38. There would inevitably be some impacts arising from the construction processes, albeit this would be limited to a temporary period. Taking into account the conditions that can limit construction hours and control construction traffic movements and arrangements, the impacts would not be significant.

Conditions

39. The Council has provided a list of suggested conditions that it considers would be appropriate and a list of conditions agreed between the parties is contained within the Statement of Common Ground. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the suggested wording.
40. In addition to the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. I have removed reference to the tenure plan as mixed tenure is no longer being secured.
41. To ensure a high quality development and in the interests of visual amenity, conditions are imposed to secure details of materials for the new buildings and the final scheme of hard landscaping. I have amended the condition relating to materials so those details can be submitted after commencement. For the same reason, a condition is necessary to ensure that the planting forming the landscaping scheme is implemented and replaced should it die within a 5 year period. A condition requiring details of any external lighting, should it be required, is also necessary for visual reasons, given the elevated position of the site.
42. In the interests of the safety of future occupiers, conditions are imposed relating to land contamination measures and to ensure appropriate action is taken if unexpected contamination is encountered. For ecological reasons, conditions are imposed relating to the need for measures to protect biodiversity during the construction process, and to secure the proposed biodiversity enhancements post-development. I have separated these requirements into two separate conditions for clarity. Similarly, a condition is imposed to secure the protection of trees to be retained, as detailed in the submitted documents.
43. To ensure a good quality of living conditions, details are necessary to demonstrate adequate noise reduction measures for the flats given their layout. For reasons of preserving highway safety and the living conditions of nearby occupants during the construction process, a condition is imposed to secure compliance with the Construction Method Statement, which includes traffic management and environmental protection measures, and also a condition restricting the hours of construction. Conditions requiring implementation of refuse storage, car parking spaces and retention of the visibility splays at the access are also necessary to ensure highway safety. Details of cycle parking and compliance with the submitted Travel Plan are necessary to encourage sustainable means of transport among future occupiers. While I have found that the obligation for the fee associated with the audit of the travel plan does not meet the tests, compliance with the Travel Plan and its future monitoring nonetheless, still meet the test of necessity.
44. To ensure adequate drainage, details of the proposed attenuation tanks are required by condition. This is a pre-commencement condition to ensure they are considered and installed at the required early stages of the development. This would, in turn, also serve to protect the surrounding highways from run-off from the site. I have not, however imposed conditions requiring the Local Planning Authority to be satisfied with the drainage infrastructure prior to occupation, as satisfactory measures should be secured by the main condition requiring the details.

45. To ensure the appropriate treatment of any archaeological remains on the site, a condition is imposed to ensure that the scheme of field works previously approved by the Council is completed and the scheme of post-investigation works is carried out. The field works need to be a pre commencement condition to ensure those remains are dealt with before further ground works commence.
46. Turning to those conditions which I have not imposed, I have not imposed a condition requiring compliance with the submitted Sustainability Statement, which largely cross-references other documents and other legislation. I do not have reasons why such a condition is necessary or relevant, and I have concerns relating to the precision and enforceability of the statements it contains.
47. As boundary treatments and the size of the car parking spaces form a part of the approved drawings, I do not consider it necessary to condition these further. As the installation of electrical vehicle charging points is a matter for Building Regulations, such a planning condition would not meet the test of necessity. Neither do I find it necessary to condition a survey of the conditions of existing roads, as any damage could be dealt with outside the remit of the planning system.
48. I have not imposed the condition relating to details of a soft landscaping scheme as detailed information has been provided, nor to trees grown abroad, as a condition already ensures that these would be replaced should they die within 5 years. In light of the extent of information provided in respect of ecological impacts and management, I do not have evidence to suggest that further conditions in this respect are necessary.
49. As the S106 secures the payment for, and delivery of, the highways works outside the site, and in the absence of evidence to suggest why a condition is also required, I do not find a condition to secure those works meets the test of necessity or reasonableness. The conditions imposed, together with the obligations in the S106, would secure measures including sustainable drainage systems, green space, biodiversity enhancements and flood risk management, which are specifically listed in Policy SC3 and the development would comply with the policy in these respects. Based on the evidence, I do not find the inclusion of additional climate change mitigation or adaptation measures are necessary.

Conclusion

50. For the above reasons, the proposed development would comply with the development plan and the appeal is allowed.

C Shearing

INSPECTOR

SCHEDULE OF 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:
6695/P/LBP, 6695/P/100/C, 6695/P/101/C, 6695/P/102/B, 6695/P/103/C, 6695/P/104/B, 6695/P/200/B, 6695/P/106/C, 6695/P/107/F, 6695/P/110/B, 6695/P/111/B, 6695/P/112/B, 6695/P/113/B, 6695/P/114/C, 6695/P/115C, 6695/P/116/C, 6695/P/117/C, 6695/P/118/B, 6695/P/119/B, 6695/P/120/B, 6695/P/121/C, 6695/P/122/C, 6695/P/123/C, 6695/P/124/B, 6695/P/125/A, 6695/P/126/B, 6695/P/127/B, 6695/P/130/A, 6695/P/131/A, 6695/P/132/A, 6695/P/164/A, 6695/P/165/A, 6695/P/166/A, 6695/P/167, 6695/P/133/A, 6695/P/134/A, 6695/P/135/A, 6695/P/140/A, 6695/P/141/B, PLG/1656/20/C, 2020/5574/001/P7, 2020/5574/002/P7, 2020/5574/003/P4, P20970-HZL-00-DR-D-2210-S4 P02.
- 3) Prior to commencement of development above the slab level of any of the approved buildings, details including samples of the materials to be used in the construction of the external surfaces of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) Notwithstanding the submitted details, prior to commencement of development above the ground level slab of any new building, details of a scheme for hard surfacing across the site shall be submitted to, and approved in writing by the Local Planning Authority. Those details shall include finished levels, pedestrian access and circulation areas, and details of materials for driveways. The development shall be carried out in accordance with the approved details.
- 5) The development hereby approved shall be carried out in accordance with the approved land contamination measures in the documents titled 'Combined Geotechnical and Quantitative Ground Contamination Risk Assessment' prepared by Ashdown Investigation Ltd and dated December 2020, and 'Ground Gas Risk Assessment' by Ashdown Investigation Ltd dated March 2021. Any variation to the measures contained therein shall be submitted to and approved in writing by the Local Planning Authority in advance of those works being undertaken. The recommendations and measures in the above mentioned documents shall be adhered to in full.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.

- 7) The development shall be carried out in accordance with the ecological measures detailed in the report titled 'Ecological Enhancement, Management and Mitigation Plan' prepared by Greenspace Ecological Solutions and dated December 2020, and shall include hedgerow, shrub and species-rich grassland management, hedgerow planting, bat and bird boxes and hedgehog houses.
- 8) The development shall be carried out in accordance with the methodologies contained in Section 4: Sensitive Works Methodologies of the report titled 'Ecological Enhancement, Management and Mitigation Plan' by Greenspace Ecological Solutions dated December 2020, and those measures shall remain in place through the construction process.
- 9) No development shall take place until the protective fences to safeguard trees and hedges have been installed in full accordance with the Tree Protection Plan forming part of the report 'Arboricultural Impact Assessment and Method Statement, Revision A' by Greenspace Ecological Solutions dated December 2020. The trees and hedgerows identified as being retained by the report shall be protected in accordance with the protection measures detailed within the report for the duration of the construction period.
- 10) The development shall be carried out in accordance with the 'Construction Method Statement', Revision A, prepared by The Park Lane Group, dated March 2021.
- 11) The measures detailed within the 'Travel Plan' by RGP, dated December 2020 shall be implemented from the first occupation of any part of the development and shall remain thereafter for a period of 5 years. Monitoring reports shall be provided to the Local Planning Authority in accordance with the details contained therein.
- 12) With the exception of internal works to the buildings hereby approved, the development must be carried out within the following times: 08:00-18:00 Monday to Friday, 08:00- 13:00 on Saturdays, and no working on Sundays or Public Holidays.
- 13) Prior to commencement of development, the scheme of investigation works detailed in the report 'Written Scheme of Investigation for an Archaeological Strip Map and Sample Excavation' by Chris Butler Archaeological Services Ltd dated September 2020, shall be completed. The post-investigation works shall be carried out in accordance with the details in that document and the timescales it contains.
- 14) Notwithstanding the submitted details, no development shall commence until details of the underwater attenuation tanks have been submitted to, and approved in writing by, the Local Planning Authority. Those details shall include: a) the design of the tanks based on the materials used; b) pollution measures upstream of the tanks including a plan for their maintenance and management. The development shall be carried out in accordance with the approved details and shall be so maintained.
- 15) The scheme of soft landscaping for the site (shown on plan PLG/1656/20 Rev.C) shall be implemented in full and not later than the first planting season following the first occupation of the development. If, within a period of 5 years from the date of planting, the tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or

becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.

- 16) No part of the development hereby approved shall be occupied until the storage and collection points for refuse bins, and all car parking spaces shown on the approved plans have been installed in full. These shall be retained and be available for use as such at all times.
- 17) Prior to the first occupation of the development, details of cycle parking areas shall be submitted to, and approved in writing, by the Local Planning Authority. These facilities shall be installed and available for use prior to the first occupation of the units they serve and shall be maintained at all times.
- 18) No external lighting shall be installed unless details have first been submitted to, and approved in writing by the Local Planning Authority. Those details shall include provisions for avoidance of 'light spill', and the external lighting shall be installed only in accordance with the approved details.
- 19) No development on the block of flats (being plots 36- 41 as annotated on plan 6695/P/100/C) shall commence above the ground floor slab level until details of noise insulation and noise reduction measures have been submitted to and approved in writing by the Local Planning Authority. Those details shall demonstrate that those units conform to the 'indoor ambient noise levels for dwellings' guideline values within BS 8233:2014 and the development shall be carried out in accordance with the approved details.
- 20) No part of the development hereby approved shall be occupied until the visibility splays at the Harrow Lane access, shown on plan 2020/5574/001 P7, have been provided in full. These shall be maintained and be free of any obstruction above 0.6m metres at all times.