



## Appeal Decision

Site visit made on 8 November 2023

**by J Hobbs MRTPI MCD BSc (hons)**

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

**Decision date: 5<sup>th</sup> February 2024**

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**Appeal Ref: APP/C1435/W/23/3314751**

**Ferndell, Osborne Road, Jarvis Brook, East Sussex TN6 2HN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Peter Isted of Prestige Homes of Sussex against the decision of Wealden District Council.
  - The application Ref WD/2022/1393/F, dated 23 May 2022, was refused by notice dated 22 December 2022.
  - The development proposed is residential development for 4 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development for 4 dwellings at Ferndell, Osborne Road, Jarvis Brook, East Sussex TN6 2HN in accordance with the terms of the application, Ref WD/2022/1393/F, dated 23 May 2022, subject to the conditions within the attached schedule.

### Preliminary Matters

2. The appellant has provided a Deed of Unilateral Undertaking (UU) to provide a financial contribution to mitigate the effect of the appeal proposal on Ashdown Forest Special Protection Area (SPA). Considering this, the Council no longer seek to defend the third reason for refusal on the decision notice. However, as the proposal could affect a European Site it is my responsibility, as the competent authority, to undertake an Appropriate Assessment. For this reason, this matter still warrants consideration as a main issue.
3. Following the deadline for final comments, a revised version of the National Planning Policy Framework (the Framework) was published. Both the Council and the appellant have been consulted on the amended version of the Framework.

### Main Issues

4. The main issues are the effect of the proposed development on the
  - character and appearance of the area,
  - living conditions of future occupiers of plot 3, with particular reference to privacy and outlook, and
  - Ashdown Forest SPA and Ashdown Forest Special Area of Conservation (SAC).

### Reasons

#### *Character and appearance*

5. The appeal site is the existing rear garden of Ferndell, which appears to have recently been cleared of vegetation. The surrounding area is characterised by

several residential properties of varying size and design. Most of the properties address the road, but there are some nearby examples of backland development including properties leading from Crowborough Hill, which adjoin the site. Surrounding properties are often sited within moderately sized plots, but there is some variation of plot size within the area. Boundary treatments to the front of neighbouring properties tend to be low walls or fences, with vegetation behind and above. These aspects combine to create a suburban character.

6. The appeal proposal comprises the subdivision of the existing garden and would lead to the construction of four detached dwellings. Two of which would front Osborne Road, with a further two bungalows to the rear of the plot. The proposed pattern of development would reflect that of nearby properties and therefore would appear congruous and not contrived.
7. Each of the proposed dwellings would be sited within moderately sized plots. The resultant footprint to plot ratio of the four proposed dwellings and Ferndell would be similar to other properties in the area. Whilst Ferndell is a semi-detached property, the four proposed dwellings are all detached and would include sufficient circulation space around them. Therefore, the proposed dwellings would not appear cramped, and the proposal would not represent overdevelopment of the site.
8. Plot 3 could include a tall boundary treatment to the front and side of the plot. Nonetheless, it would be possible for the appearance of the boundary treatment to be softened through the inclusion of vegetation behind and above a wall or fence. This would ensure it assimilates with other boundary treatments in the area. The use of appropriate boundary treatments is one of the key principles specified within the Wealden Design Guide<sup>1</sup>. The installation of appropriate boundary treatments for all properties, could be secured by condition.
9. Whilst all the proposed dwellings are detached, there is a mix of larger two storey properties and smaller bungalows, which would cater for different demographics. The differing size of the dwellings would be reflective of the varied size of neighbouring properties.
10. I note that the loss of a significant amount of vegetation on site has altered what appeared to be, based on the photographic evidence, a verdant parcel of land. However, the Council acknowledge within their representations that neither itself nor Forestry England could lawfully resist the removal of trees from the site. My assessment of the acceptability of the appeal proposal is therefore based upon the current condition of the site.
11. Overall, the proposed development would not have a harmful effect on the character and appearance of the area. It would therefore accord with Policy EN27 of the Wealden Local Plan (LP), December 1998 and spatial planning objectives SPO13 and SPO14 of the Wealden District Core Strategy Local Plan (CS), February 2013. These objectives and policy indicate proposals will be permitted where the scale, form, density and site coverage respect the character of adjoining land and the Council will encourage high quality, safe and attractive living environments whilst maximising the use of previously developed land. It would also be in accordance with the Framework, where it

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<sup>1</sup> Wealden Design Guide, Supplementary Planning Document, Wealden District Council, November 2008

advises that the creation of high quality, beautiful places is fundamental to what the planning process should achieve.

### *Living conditions*

12. The proposed external amenity space for plot 3 is predominantly sited to the front of the property, it would include a driveway and a moderately sized garden. The first floor windows from the proposed dwellings in plots 1 and 2 would look towards this space. The proposed distance between the windows and the garden area would be similar to other properties in the area. There would be sufficient space between those windows and the garden area and a boundary treatment, to ensure that the privacy of future residents of plot 3 would not be harmfully affected. Furthermore, views from plot 2 toward the external amenity area would also be partially screened by the side elevation of the proposed dwelling within plot 3.
13. People accessing plot 4 would travel directly past the external amenity space associated with plot 3. The proposed dwelling within plot 4 is a two-bedroom bungalow. As such, the number of movements associated with the dwelling is likely to be modest. In turn, the amount of overlooking by people accessing plot 4 would be limited. Moreover, future residents may wish to construct a tall boundary treatment around part of the boundary to create a more private space and with appropriate landscaping this could provide privacy benefits whilst also assimilating with the character and appearance of the area. As above, the design of boundary treatments and soft landscaping could be secured by condition.
14. The front amenity space for plot 3 has a moderate depth. Therefore, if a tall boundary treatment was installed around a large section or all of the boundary, future residents would not feel enclosed or suffer from a poor outlook. Furthermore, any tall boundary treatment could be softened through planting, which could be secured by condition.
15. Overall, the proposed development would not have a harmful effect on the living conditions of future occupiers of plot 3, with particular reference to privacy and outlook. It would therefore comply with LP policy EN27 and CS spatial planning objectives SPO13 and SPO14. These objectives and policy indicate that the proposal should not create an unacceptable impact on the privacy and amenities of the neighbourhood and, as above, the Council will encourage high quality, safe and attractive living environments as well as making sure housing densities are compatible with the particular location. The proposal would also accord with the Wealden Design Guide and the Framework where they advise that private amenity space should be planned as an integral part of the development and planning decisions should ensure that developments create places with a high standard of amenity.
16. CS policy WCS14 is referred to in the second reason for refusal. This is an overarching policy which concerns the presumption in favour of sustainable development. It is unclear how it directly relates to the effect of the proposed development on the living conditions of future residents.

### *European protected sites*

17. The site is in proximity to Ashdown Forest SPA. The SPA is designated due to the concentration of Dartford warbler and European Nightjar in the area. The

- objective of the SPA is to ensure the integrity of the site is maintained or restored so that it continues to support the population of ground nesting birds.
18. Recreational disturbance is one of the principal threats to ground nesting birds, dog walking can be particularly problematic. The results of visitor surveys to Ashdown Forest indicate that residents living within 7km of the forest are likely to visit it. The appeal proposal would increase the population living within 7km of the SPA; it is therefore likely that future occupants of the proposed development would visit the area.
  19. I consider that the proposal, by itself and in combination with other development in the area, would have a likely significant effect on the SPA due to an increased disturbance through recreational activity. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SPA.
  20. Given the modest scale of development, there is no scope for on-site mitigation. In this instance, it is appropriate to secure a financial contribution towards Suitable Alternative Natural Greenspace (SANG) provision and Strategic Access Management and Monitoring (SAMM), in line with the tariffs outlined in the Council's Ashdown Forest Mitigation Zone Background Paper. This contribution would support an alternative recreational destination for occupants of the proposal and help mitigate disturbance on the ground nesting birds. Natural England has been consulted as part of this Appropriate Assessment and has confirmed that the financial contribution would suitably address the effects associated with the proposal and relieve pressure on the SPA.
  21. The appellant has provided a UU which would ensure they contribute toward SANG provision and SAMM, in line with the guidance in the event planning permission is granted. I am satisfied that the contribution would sufficiently mitigate the level of harm likely to be caused by the development and would be pursuant to the Council's adopted strategy.
  22. The appeal site is also in proximity to the Ashdown Forest SAC. The qualifying features underpinning the SAC designation are the presence of European dry heath, North Atlantic wet heath and great crested newts. Like the SPA, the conservation objectives of the SAC are to maintain or restore qualifying habitats. Natural England's supplementary advice explains that the heathland habitat of the Ashdown Forest is sensitive to changes in air quality and is vulnerable to atmospheric pollutions from several sources.
  23. The Council proposed a local plan, now withdrawn, which sought to deliver significantly more development than the appeal proposal. Natural England was satisfied that the local plan would not adversely affect the integrity of the SAC and that conclusion was not based on mitigation measures being needed under the specific requirements of the Habitat Regulations. For these reasons, the Council, appellant and Natural England all agree that the proposal would not have a likely significant effect on the SAC and therefore specific mitigation is not required.
  24. There is no evidence before me which would indicate that the proposal would lead to an increase in atmospheric pollution which would be harmful to the

SAC. I therefore conclude the proposal would not have a likely significant effect on the SAC.

25. Overall, the proposed development would not have a harmful effect on or adversely affect the integrity of Ashdown Forest SPA, with appropriate mitigation, or Ashdown Forest SAC. It would therefore comply with CS Policy WCS12, and LP policies EN1, EN7 and EN15. These policies indicate that it is the Council's intention to reduce the recreational impact on visitors to the SPA, the Council will have regard to Government guidance in considering the location of development, particular regard will be given to the effect of proposals on the open heathland areas of Ashdown Forest, and the Council will seek to safeguard designated nature conservation sites.

### **Other Matters**

26. Although the site slopes uphill toward plots 3 and 4, it is not particularly steep. Given the distance between Ferndell, Chez Nous, Kilburn and the proposed dwellings within plots 3 and 4, as well as the intervening boundary treatments, the proposal would not lead to overlooking of existing properties.
27. The proposed dwellings are sited close to the boundary of the site. However, direct views of the proposed two storey dwellings within plots 1 and 2 would be from side windows only, across Osborne Road or from other properties a significant distance away. There would be some direct views of the proposed bungalows within plots 3 and 4. However, they would be largely screened by the existing boundary treatments as they are single storey properties. Moreover, neighbouring properties accommodate moderately sized gardens; therefore, the windows of those properties are a significant distance from the proposed siting of the bungalows. I therefore conclude that the proposed dwellings would not be overbearing on existing neighbours.
28. The proposed amenity spaces of the dwellings, in particular plots 3 and 4, would be much smaller than the existing garden area associated with Ferndell. Nonetheless, the size of the proposed gardens and the reduction in the size of Ferndell's garden is appropriate for the size of the properties and reflective of neighbouring plots.
29. The proposed access to plots 3 and 4 would service a limited amount of traffic given the size of the dwellings proposed within those plots. Whilst the access would be close to Chez Nous and its garden, it would be separated by a tall boundary treatment, immediately next to the access. The noise generated by the access and the residential use of the properties would be in keeping with similar noise in what is a suburban area. Therefore, I consider that the proposed development would not cause harm to the neighbouring resident's living conditions, with regard to noise and disturbance.
30. The appeal proposal would result in the loss of off-street parking associated with Ferndell. There is no substantive evidence before me that the modest increase in demand for on-street parking could not be met. I also consider that drivers exiting the access for plots 1 and 2 would have appropriate visibility and there would be an acceptable amount of access points. As such, drivers accessing or exiting the proposed development would be able to manoeuvre safely. Based on the evidence, and from my own observations, I do not consider that the appeal proposal would have an unacceptable impact on highway safety.

31. The Preliminary Ecological Assessment concluded that the site had low potential for common reptiles foraging and commuting within the site boundaries and the adjacent ancient woodland had medium potential to support foraging and commuting habitats. The Assessment proposes mitigation to ensure reptiles are not harmed during the construction period. Also, the proposal includes an appropriate buffer between the proposed development and the Ancient Woodland adjoining the site. There is no substantive evidence before me which would indicate that the proposed mitigation and buffer is inadequate, and these measures could be secured by condition.
32. Based on the evidence, there is no policy requirement outlining the need for additional sustainability measures beyond what is proposed.

### **Conditions**

33. The Council has indicated the conditions that it considers would be appropriate. I have considered these in light of the guidance contained within the Planning Practice Guidance (PPG) and the Framework.
34. Conditions specifying a time limit to implement the permission and approved plans are required in the interest of certainty. A condition requiring the materials for the external surfaces to be approved is required in the interest of character and appearance.
35. I have set a time limit of 18 months to implement the permission, in line with the Council's intention to expedite housing delivery and in accordance with the PPG. I do not accept that appellant's wording to connect the time limit to implement the permission to the approval of conditions as this would not expedite housing delivery.
36. A condition requiring a construction method statement is necessary to protect ancient woodland and protected species. Likewise, a condition controlling the installation of external lighting is necessary to ensure that the proposal does not have a harmful effect on protected species. A condition requiring a biodiversity net gain (BNG) scheme to be approved is reasonable to ensure the proposal is delivered in line with the guidance contained within the Framework. Moreover, a condition requiring the planting of the soft landscaping scheme and approved BNG scheme within the first planting season and for it to be retained for five years is necessary to ensure that the development is delivered in accordance with the approved details.
37. Conditions requiring car parking spaces and access to be laid out prior to occupation of the dwellings is required to ensure the properties can be serviced appropriately and reduce demand for on-street parking. A condition requiring the construction of cycle parking is reasonable to encourage the use of sustainable transport modes.

### **Conclusion**

38. For the reasons given above, the proposed development complies with the development plan when considered as a whole. Therefore, I conclude that the appeal should be allowed, and planning permission should be granted.

*J Hobbs*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 18 months from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20, 21 rev B, 22, 23, 24, 25, 26 rev A, 27 rev A, and 01/FERN.
- 3) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall include details of the:
  - i) storage of plant and materials used in constructing the development;
  - ii) measures to control the emission of dust and dirt during construction;
  - iii) use of external lighting and any measures to control its effect on foraging bats and other nocturnal creatures; and,
  - iv) protective fencing along the boundary with the ancient woodland.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No above ground works shall commence until details of hard landscaping, including boundary treatments, and the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No dwelling shall be occupied until details of cycle storage for each of the dwellings has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the cycle storage has been constructed in accordance with the approved details. The cycle storage shall be retained thereafter.
- 6) No dwelling shall be occupied until the associated vehicle parking spaces, shown on drawing No 21 rev B, have been laid out within the site. The parking spaces shall thereafter be retained for the use of vehicle parking.
- 7) No dwelling shall be occupied until the part of the service road which provides access to it shall have been constructed in accordance with drawing No 21 rev B. The service road as constructed shall be retained thereafter.
- 8) No dwelling shall be occupied until a scheme to provide a biodiversity net gain has been submitted to and agreed in writing by the local planning authority. No dwelling shall be occupied until measures within the scheme, other than planting, have been implemented and they shall be retained thereafter.
- 9) Soft landscaping works shall be carried out in accordance with the details shown on approved drawing No 01/FERN and the approved scheme to provide a biodiversity net gain. 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.

- 10) Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to its installation. Development shall be carried out in accordance with the approved details.