



Appeal Decision

Site visit made on 21 December 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Appeal Ref: APP/C1435/W/23/3316110

Land west of Alice Bright Lane and south of Hurtis Hill, Crowborough, East Sussex

- 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 Asprey Homes Southern Ltd against the decision of Wealden District Council.
 - The application Ref WD/2022/1639/F, dated 23 June 2022, was refused by notice dated 24 November 2022.
 - The development proposed is erection of 4 dwellings, new access and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 4 dwellings, new access and landscaping at land west of Alice Bright Lane and south of Hurtis Hill, Crowborough, East Sussex, in accordance with the terms of the application, Ref WD/2022/1639/F, dated 23 June 2022, subject to the conditions set out in the schedule below.

Preliminary Matters

2. A Unilateral Undertaking has been submitted with the appeal, dated 6 April 2023 (the UU). This has been taken into account in the determination of the appeal.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to comment on the implications of this change and I have taken the responses received into account.
4. The appeal documents include a plan of proposed works to the highway outside the site, including an extended footway and new pedestrian crossing. As these works relate to land beyond the appellant's control, would require separate consent and do not comprise one of the approved plans for the appeal in any event, this drawing has been taken into account.

Main Issues

5. The main issues are:
 - Whether the site is suitably located for new housing, having regard to the Council's spatial strategy and accessibility to services and facilities;
 - Effects on the character and appearance of the area, and;
 - Effects on the Ashdown Forest Special Protection Area (SPA)

Reasons

Suitability of the Site for Housing

6. Saved policies GD2 and DC17 of the Wealden Local Plan 1998 (the LP) seek to restrict development to within defined development boundaries unless it conforms with other policies in the plan. The appeal site is outside any development boundary, and the proposal would conflict with policies GD2 and DC17. The Council acknowledge however, that there is a need to breach these development boundaries in order to deliver the necessary housing and that the weight to be attributed to these restrictive housing policies should be reduced given the absence of a five-year land supply for housing.
7. Policy WCS2 of the more recent Wealden District Core Strategy Local Plan 2013 (the CS) states that land will be allocated to provide an additional 300 homes in Crowborough, and the supporting text in the CS identifies 'broad locations' for these homes, which refer to Strategic Development Areas. However, the location of those allocations has not been carried forward as part of the adopted development plan and there is no substantive evidence before me of the likelihood of those areas delivering housing. Strategic Planning Objective SPO3 of the CS refers to the delivery of homes and states that development will be focused in and around settlements including Crowborough, among other settlements, to meet housing need. For these reasons I do not find the appeal scheme's location would be at odds with the spatial strategy set out in the development plan, when considered as a whole.
8. The site is located to the southern side of Crowborough, close to the development boundary which lies to the north and the east of the site. Crowborough is identified within the CS as a District Centre due to its range of services and facilities, including shops, employment, schools and its accessibility. The main parties agree the site is approximately 1.7km from the town centre, which equates to around a 25 minute walk. Crowborough Station is a similar distance from the site, and provides services towards London and other settlements.
9. Despite the distance to the town centre, the site is also close to some other facilities and services in Crowborough, including a primary school, leisure facilities, and a convenience store. There are also bus stops near the site which provide links to Crowborough as well as other settlements including Tunbridge Wells. Therefore, there are adequate services and facilities close to the appeal site which could serve the day to day needs of future occupants.
10. However, the site itself is physically disconnected from the network of footpaths which provide safe pedestrian links to these facilities. Public footpaths terminate around the junction to the north of the site and, as a result, future occupants accessing Crowborough by foot would need to walk in the road with traffic, albeit for a short distance. This is likely to deter some from accessing facilities on foot, particularly future occupants with children or mobility impairments, instead promoting car use.
11. The appellant proposes a pedestrian link from the site to the existing footpaths to the north, including a pedestrian crossing. While this relates to land outside the appellant's control, the Highways Authority have reviewed the proposed alterations and evidence of a road safety audit has been submitted with the appeal. The success of these measures would rely on the trimming of

vegetation to maintain visibility at the crossing and, given the change in character at the northern side of Alice Bright Lane beyond the crossing, this would not result in visual harm.

12. Having considered the evidence including comments of technical consultees, I am satisfied that an appropriate solution could reasonably be achieved for the works to the highway. The final design of those works would be subject to agreement with the highways authority and I note the main parties agree that a Grampian style condition could be used. I am satisfied that such works are capable of being carried out and within the time-limit imposed by the permission, which I return to below.
13. In conclusion on this main issue, the proposal would be suitably located with regard to the Council's spatial strategy and its accessibility to services and facilities. While there would be conflict with LP policies GD2 and DC17, for the reasons set out I afford those conflicts limited weight and the proposal would comply with SPO3 of the CS as well as the Framework insofar as it seeks to focus development in locations which are, or can be, made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. I do not find conflict with CS Policy WCS6, which contains the strategy for growth in rural settlements and does not include Crowborough.

Character and Appearance

14. The site is predominantly open in its character, comprising grass and shrubland set between multiple trees, as well as the remnants of earlier structures to its southern side. There is visibility into the site from surrounding properties and from Alice Bright Lane, although this would be reduced in summer months when there would be foliage on the surrounding hedgerows. Despite its pleasant verdant character, the presence of surrounding development, including the gardens of properties to the north and their associated boundary treatments and paraphernalia, together with other properties surrounding Brooklands Avenue, severely limits the perception of rural character on the site.
15. The site is located within the High Weald National Character Area (NCA) which is vast and encompasses a number of settlements. Given the above attributes and proximity to the settlement boundaries, the site displays few of the defining characteristics of the NCA set out in the National Character Area Profile and instead forms part of the semi-rural fringe of the settlement.
16. The site nonetheless contributes positively to the appreciation of the edge of the settlement and the transition to the countryside beyond the appeal site. When travelling along Alice Bright Lane, the more dense residential development of Crowborough gives way to more dispersed patterns of development and the road narrows and becomes enclosed by hedgerows.
17. The character of the site would undoubtedly change as a result of the proposal with the introduction of new housing, access and the subdivision of the land, giving urbanising effects. However, by reason of its location close to other development forming the edge of Crowborough, it would form a logical extension to the settlement. The set back of the proposed houses from the road edge and the gaps between the buildings would allow some existing vegetation to be retained and give opportunities for additional planting to develop. An area of undeveloped land would also be retained to the northern

side of the site. The loss of the trees would substantially reduce the site's verdant qualities; however, the attributes above would ensure the proposal retains the feeling of an edge of settlement location and respect the distinctive transitional location between Crowborough and the countryside beyond.

18. Given the varied character and appearance of other houses in the surrounding area, and varied street layouts including cul-de-sacs nearby, the design of the proposed houses and their layout around the access would adequately respect their context. The proposed houses would not appear unduly cramped given their context and even if the house on Plot 4 were to be more visually prominent given its raised location, this would not cause visual harm given the backdrop of other development.
19. Interested parties have raised concern for the effects of the proposal on the setting of the High Weald Area of Outstanding Natural Beauty (AONB) and National Landscape, of which the boundary lies approximately 380m to the south of the appeal site. The proposal would not be harmful to its setting and, for the reasons set out above, the proposal would be appropriate in visual terms to this transitional location at the edge of the settlement. As such I am satisfied that the proposal would avoid adverse impacts on the AONB, as required by the Framework.
20. For these reasons taken together, the proposal would respect the character and appearance of the area. It would comply with Policy EN27 of the LP which requires, among other things, that the form and design of development should respect the character of adjoining development and promote local distinctiveness. It would also comply with the design objectives of the Framework, which include that development should be sympathetic to local character.

Ashdown Forest SPA

21. The appeal site is located within the 7km zone of influence of the Ashdown Forest SPA which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended. The qualifying features of the SPA relate to its concentration of Dartford Warbler and European Nightjar, and its conservation objectives seek to ensure the integrity of the site is maintained or restored so that it continues to support the population and distribution of those species. The proposed development would not be directly connected with, or necessary for, the nature conservation of the site.
22. Recreational disturbance has been identified as one of the principle threats to ground nesting birds and can cause damage to the bird's habitat through trampling and erosion, including through dog walking. The proposal would increase the number of residents living a short distance from the SPA and future occupants may visit the SPA for recreational purposes. As such, there is a pathway for effects on the SPA. Given these factors, the proposal would have a likely significant effect, either alone or in combination with other projects, on the qualifying features of the SPA, and could lead to an adverse effect on the integrity of the site.
23. The proposal does not entail any on site mitigation for these effects. However, the Council provide an approach for mitigation through Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM), which is supported by Natural England. Accordingly, the Council seek

financial contributions to these measures based on a tariff for each new dwelling. Based on the evidence, I have no reason to believe that these contributions would not provide effective mitigation for the effects of the proposal on the SPA.

24. The UU would secure a contribution of £4,680 (based on four dwellings) towards SAMM, as well as a SANGS Contribution of £5,000 per dwelling. The Council has reviewed the document before it was signed and are content that the UU would appropriately secure these contributions. I am also satisfied that the obligation would meet the relevant tests for an obligation set out in the CIL Regulations¹ and the Framework.
25. In conclusion on this main issue I am satisfied that the proposal would avoid adverse effects on the integrity of the SPA. The proposal would comply with LP Policy EN15 and CS Policy WCS12 which relate to protection of designated nature conservation sites, and LP Policy EN1 insofar as it relates to the effects of proposals on the environment. For the reasons given the proposal would comply with the objectives of the Framework relating to habitat sites, and the Habitats Regulations.

Other Matters

26. The Council accept that it cannot demonstrate a five year land supply for housing and, as a result, the provisions of paragraph 11d) of the Framework are relevant to the appeal. As the application of policies in the Framework that protect areas of particular importance do not provide a clear reason for refusing the development proposed, and as no adverse impacts of granting planning permission have been identified, the proposal would benefit from the presumption in favour of sustainable development. This is a material consideration which adds weight in favour of granting planning permission. This approach is consistent with CS Policy WCS14, which similarly relates to the presumption in favour of sustainable development.
27. To the west the site adjoins a woodland ghyll which includes an area of ancient semi-natural woodland beyond, which provides important and irreplaceable habitat. The proposal would retain an appropriate buffer with the ancient woodland and would avoid adverse effects upon it. The ecological value of the site has been specifically considered by the appellant's Preliminary Ecological Appraisal and Biodiversity Net Gain and Ecological Enhancement reports. It has also been acknowledged that the new connecting pathway would have effects. I am satisfied that the appellant has adequately considered the effects of the proposal on the site's ecology including protected species.
28. The proposal has the ability to provide ecological enhancements appropriate to the scale of the development here and compliance with the relevant planning conditions would be a matter for the Council. While some site clearance has already taken place, this would appear to have been predominantly low level shrubs on part of the site and there is not substantive evidence that the findings in respect of biodiversity net gain would substantially change, or a policy conflict arise, if this had not occurred. A precautionary approach has been adopted to consideration of Great Crested Newts, given the uncertainty surrounding some ponds close to the site. Based on the evidence, the internal

¹ Community Infrastructure Levy Regulations 2010 as amended

lighting conditions of the proposed new houses would be acceptable and would not necessitate significant additional pruning of those nearest trees.

29. I note the comments of the Highway Authority that the extent of parking and the proposed parking layout would be acceptable and conditions can be imposed relating to these matters. The Highways Authority also find that the relevant part of Alice Bright Lane is adequate to accommodate a two-way flow of traffic to the north of the site for a sufficient distance. While there are many reports of unsuitable conditions on Alice Bright Lane, this represents an existing situation and there is not evidence that the effects of four additional homes would be unacceptable in terms of highway safety. Neither would the level of trips generated by the proposal have a severe residual cumulative effect on the road network. A condition can be used to ensure appropriate construction arrangements for this location.
30. The Council acknowledge problems with surface water flooding on Alice Bright Lane. However, I have no reason to believe that a suitable solution could not be achieved here and the imposition of a condition relating to the treatment of surface water would be appropriate for the scale of the development proposed.
31. Given its edge of settlement location I do not consider the new housing would be isolated for the purposes of paragraph 80 of the Framework. I appreciate concerns relating to additional pressure on local infrastructure, including schools and health services, as well as the sewer and water systems, which are reported as heavily overstretched. However there is no evidence to suggest that four additional homes would create unacceptable additional pressure nor harm to these services. Neither is there evidence of a policy requirement for affordable homes to be provided for this quantum of development.
32. There are also concerns relating to omissions and inaccuracies among the supporting documents, for example relating to the trees on the site. However I consider the nature of the proposals is clear from the documents as a whole, and alongside my site visit, they are adequate for the assessment of the appeal scheme. While there may be other legal obstacles to be addressed before the appellant could implement the development, there is no evidence to suggest that they should provide a reason to refuse or delay the grant of planning permission.
33. There have been attempts to obtain planning permission for development on the appeal site in the 1950s and 1960s, however, these would have been subject to consideration under different policy circumstances. In the absence of details of those proposals, they do not provide a reason to alter the above judgement, which is made under the development plan at this time.
34. My attention has been drawn to a decision of the Council to refuse a proposal for 33 homes further south along Alice Bright Lane². That proposal would appear to be notably different to the appeal scheme before me, for example in terms of its distance from any settlement and degree of connectivity to services and facilities. The landscape considerations would appear to be very different due to that site's more rural setting and proximity to the AONB. As such, the decision does not provide a reason to alter the above judgement.

² Council reference WD/2021/0992/MAO

35. Similarly, the appeal decision for Hildenvale³ relates to land some distance from the appeal site where the character of the area was notably different and the Inspector describes a distinctive rural character, which is not the case here. I appreciate concerns for the gradual 'creep' of the town into the surrounding countryside, however each development proposal is required to be assessed on its own particular circumstances.
36. Article 4 directions have also been highlighted, relating to land further south along Alice Bright Lane. These remove permitted development rights for various types of development on that land in response to threats for the subdivision of the land into smaller plots for sale. Again, given the differing character and context of that site, together with its distance from the settlement, different circumstances apply and the presence of restrictions on that land would not amount to reason to refuse the appeal scheme.

Conditions

37. The Council has provided a list of suggested conditions that it considers would be appropriate. 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 Council's suggested wording.
38. The Framework allows Councils to consider shorter timescales on planning permission to ensure that housing developments are implemented in a timely manner where this would expedite the development without threatening its deliverability or viability. While I appreciate the Council's objectives, the development proposed would have a number of pre-commencement conditions including the need for separate approval for highways works. As such, a shorter time scale could threaten the delivery of the proposed housing and I have imposed the standard three year period. For certainty a condition is imposed to ensure the development is carried out in accordance with the approved plans.
39. To ensure the protection of the trees to be retained on the site, a condition relating to tree protection measures is necessary. This needs to be satisfied before works begin to ensure protective measures are in place from the outset. Conditioning the protection measures specifically within the Arboricultural Report would ensure that the appropriate trees, including those beyond the site boundaries which are not shown, would be protected. In the interests of visual amenity, details of materials of the houses and a scheme of hard and soft landscaping are conditioned, as well as a requirement to replace any new planting as necessary.
40. Given the findings of the ecological report and in recognising nearby ponds, its recommendations regarding a precautionary approach for working are conditioned to ensure appropriate protection of relevant species from the outset. For ecological reasons and to mitigate the effects of the new pathway on existing hedgerows, the proposed enhancements are also conditioned. The appellant's reports detail appropriate measures including enhancements to the woodland to the west of the site. External lighting is also conditioned for ecological reasons and I have no reason to believe this would be unenforceable.

³ Appeal ref APP/C1435/W/21/3286532

41. To ensure safe pedestrian access into the site and to provide appropriate connectivity to the main part of the settlement and public transport, a condition for works to the highway would be necessary. A Grampian style condition is appropriate here given the need for those works to be assessed by the Highways Authority. Given the importance to the connectivity of the development, those details need to be agreed prior to commencement of development.
42. In the interests of highway safety, conditions are imposed to secure the required visibility splays at the access and all parking and manoeuvring spaces shown. Given the existing conditions on other parts of Alice Bright Lane it is also necessary to condition details of construction arrangements and these need to be considered before commencement. I have simplified the condition, given the scale of the proposal, and it will be for the Council to assess whether the level of detail submitted is appropriate to the development. Given local circumstances relating to surface water, details of such drainage for the site are also necessary. These details should be provided before commencement to ensure drainage is an integral part of the development.
43. As the site access and car ports are shown on the approved plans, it is not necessary to replicate a condition relating to delivery of those features. Given current building regulation requirements, and in the absence of detail of a planning reason for additional requirements, I have not imposed conditions requiring vehicle charging points and other energy performance measures. Similarly, in the absence of evidence as to why it is necessary in the context of the submitted plans, a condition relating to gradients of the access is not imposed. Given that appropriate ecological enhancements can be secured, it is not apparent, based on the evidence before me, why an additional Landscape and Ecological Management Plan is necessary here, particularly given the scale of the development proposed.

Conclusion

44. Although the proposal would conflict with parts of the development plan, for the reasons given I afford those conflicts limited weight, and the proposal should be regarded as being compliant with the development plan when read as a whole. The appeal is therefore allowed.

C Shearing

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: AR/663/BP01/C, AR/663/PD01, AR/663/PD02/B, AR/663/PD03/B, AR/663/PD04, AR/663/SP01/B, AR/663/G1.
- 3) No development shall commence until a scheme for provision of works to the highway, to facilitate safe pedestrian access to the site, has been submitted to and approved in writing by the Local Planning Authority. Those works shall be carried out in full prior to the first occupation of any part of the development.
- 4) Prior to the commencement of development, tree protection measures shall be installed in full accordance with the details contained in the Arboricultural Survey and Planning Integration Report ref AR/4032c/jq by Quaife Woodlands dated 14 June 2022. Those measures shall be maintained in full accordance with those details until all external construction works are completed.
- 5) Prior to the commencement of development, a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be carried out only in accordance with the approved Plan.
- 6) Prior to the commencement of development, full details of the means of surface water disposal at the site shall be submitted to and approved in writing by the Local Planning Authority. Any infiltration based drainage method shall be supported by an infiltration test. The development shall be carried out in accordance with the approved details and prior to the first occupation of any new house.
- 7) The development, including site clearance, shall be carried out only in accordance with the recommendations and measures for protection of Great Crested Newts set out in the 'Ecological Technical Note- Response to Nature Space/ Pond Presence' by The Ecology Partnership dated 26 August 2022.
- 8) Prior to the commencement of works above the ground level associated with any new house, details of the external materials of the houses shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
- 9) Prior to the commencement of any works above the ground level, details of a scheme of hard and soft landscaping for the site shall be submitted to and approved in writing by the Local Planning Authority. This shall include but not be limited to: plant species, details of paved areas, means of enclosure, and an associated programme for their implementation. The development and planting shall be carried out in accordance with the approved plans and the timescales set out in the programme of implementation.

- 10) Any trees, shrubs, hedges or plants forming part of the approved landscaping scheme 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 a similar size and species.
- 11) Prior to the first occupation of any new house, visibility splays of 2.4m by 45m shall be provided to the south of the vehicular access, and 2.4m to 50m to the north. These splays shall be maintained at all times.
- 12) Prior to the first occupation of each new house, its parking areas shall be completed and available for use. The parking areas, driveways and turning head shown on the approved plans shall remain free of obstruction and available for use at all times.
- 13) Not later than 6 months following the first occupation of any part of the development, biodiversity enhancements shall be implemented, being those referred to in the report 'Biodiversity Net Gain and Ecological Enhancement document April 2022' to include management and enhancement of woodland, native planting, and biodiversity features within gardens as specified.
- 14) No external lighting shall be installed within the development unless its details have first been submitted to and approved in writing by the Local Planning Authority. Those details shall demonstrate how the lighting is appropriate to the biodiversity of the site and any lighting shall be installed and maintained only in accordance with the approved details.

End of Schedule