



Appeal Decision

Site visit made on 30 January 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23RD February 2024

Appeal Ref: APP/C1435/W/23/3321795

**Land adj to The Corner House, Ninfield Road, Ninfield, East Sussex
TN39 5JJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Nexus (South East) Ltd against the decision of Wealden District Council.
 - The application Ref WD/2022/0334/O, dated 14 March 2022, was refused by notice dated 24 February 2023.
 - The development proposed is 4 new dwellings and access.
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Decision

1. The appeal is allowed and planning permission is granted for 4 new dwellings and access at land adj to The Corner House, Ninfield Road, Ninfield, East Sussex TN39 5JJ in accordance with the terms of the application, Ref WD/2022/0334/O, dated 14 March 2022, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The application has been made in outline with access and layout for consideration at this stage, and matters of the appearance, landscaping and scale reserved for future determination. The submission is accompanied by plans, including elevations, floorplans and 3D views which give indications of the details which could be submitted at any subsequent reserved matters stage. I have had regard to these as illustrative of what the appellant has in mind, but that other details could be subsequently proposed.
3. A revised National Planning Policy Framework (the Framework) was published in December 2023. The main parties have been given the opportunity to comment on any implications of the revised Framework for this appeal and I have taken those views into account.

Main Issue

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

Reasons

5. Around the junction of Potmans Lane and Ninfield Road, and extending along Potmans Lane, there is a reasonable extent and a fairly concentrated pattern of built development. This generally has a residential character with a mix of dwelling sizes and spaces between buildings. Although this area is not

designated a settlement with a defined boundary, in general there is a clear division between the extent of the built form and the surrounding agricultural land.

6. The appeal site is a level area of land that links seamlessly with and forms part of The Corner House. The land benefits from a Certificate of Lawful Use confirming its use as garden land. This area of land is laid to rough grass and has a well-established hedge that divides it from the open agricultural land to the broadly east.
7. The scheme proposes four dwellings with a separate vehicular access to serve this development. The access would be constructed across the short grass verge area which fronts the main road. While a short section of hedge would be removed, the change to this reasonably wide verge area would be fairly limited and the access would be visually associated with the existing built development around the cross roads, the bus stop and the lay-by. I do not consider that the provision of the access would look out of place within these general surroundings, nor would this aspect of the scheme give the appearance of extending development into open countryside.
8. Within the site there would be a reasonably long and linear access drive but the appearance of this feature could be tempered by the retention of the adjoining mature hedge that separates the site from the field. With the reserved matters details, other structural landscaping could be incorporated along the frontage of the properties to further ensure that the appearance of this section of the site would provide a suitable landscaped border adjoining the open countryside. In these circumstances, and with the entrance in the broad surroundings of the crossroads, I do not consider that the provision of a cul-de-sac serving four dwellings would appear conspicuous or at odds with the general pattern of development in this area.
9. The layout shows four sizeable properties, however, they are suitably spaced apart and the indicative single storey garages, if part of the reserved matters details, would help to give the appearance of additional spacing at first floor level along this row. If a bungalow, along the lines of the indicative elevations, was to be constructed this would help reduce the built form and bulk of the development at that end of the site. The indicative plans, however, show somewhat tall ridge heights and fairly bulky roofs to the three houses, but this is a matter of scale and appearance that could be addressed at the reserved matters stage. The plots sizes and garden spaces would be adequate for this development in this area and overall, the proposed layout with four dwellings is not, in itself, unacceptable.
10. The development would be clearly apparent from outside the site, including from sections of the main road. When coming from the south east, the buildings would be visible but would be seen in the general context of other built development. With appropriate details at the reserved matters stage to address the scale of the buildings, the development would not appear overly conspicuous or out of character with the surroundings. From the main road around the cross roads, again the development would be visible, but could be softened by the retention of the front boundary hedge and again the development would be acceptably grouped with the other built form. The scheme would not give the impression that the dwellings created an incursion into undeveloped countryside.

11. Drawing these matters together, the proposed layout, and the likely form that the resulting development could take at the reserved matters stage, would be such that the density, form and character of the development would be compatible with and respect the general mix, bulk, spacing and form of residential development within this area. The development would, subject to appropriate details at the reserved matters stage, have sufficient spacing between buildings and to the boundaries such that the development would not appear cramped on the site. The scheme would, thereby, meet with the Framework requirement that development should be sympathetic to local character, including the surrounding built environment and landscape setting.
12. At this outline stage, I conclude that I am satisfied, with appropriate details at the reserved matters stage, that the scheme would have an acceptable effect on the character and appearance of the area. The development would comply with saved Policies EN8 and EN27 of the Wealden Local Plan 1998 (the Local Plan) and the Framework which, amongst other things, require that the scale, form, site coverage and density of the development should respect the character of the adjoining development.

Other Matters

13. Objections to the development from local residents and Ninfield Parish Council have been submitted at both the application and appeal stages. I have taken into account all the comments and examined the objections regarding the effect of the development on the character and appearance of the area under the main issue above.
14. In terms of other issues, I note the concerns regarding the proposed access and highway safety. I looked at this matter at my site visit. Appropriate visibility splays can be provided and I have found no reason to disagree with the conclusions of the Highway Authority that the scheme would provide a safe and suitable access.
15. I also understand that an application for six dwellings on this site was refused by the Council. This proposal is a revised development for four units, albeit with larger dwellings, and is a scheme that I have considered on its merits. The scale of the housing scheme is such that the Council has not raised any objection in the reason for refusal based on the likely number of bedrooms for each unit nor any need for affordable housing. Indeed, my attention has not been drawn to any development plan policy that would require an affordable housing contribution in the circumstances of this development.
16. The effect of the development on the living conditions of adjoining residents has been highlighted in the representations. The development would be clearly visible from neighbouring properties. However, in terms of the indicative bungalow, the likely bulk and the avoidance of any first floor windows in the roof space that would face neighbouring properties would assist with minimising the effect of that unit on adjoining properties. With the other three units, they would, in all likelihood, have some first floor windows that would allow views towards the adjoining dwellings in Potmans Lane. However, given the likely distances between main windows, the layout which shows the houses set back from their proposed western boundary and a bulk of buildings that could likely be achieved at the reserved matters stage, I consider that the relationship between properties would not be unreasonable and would not unduly affect the living conditions of existing and future occupants. In this

- respect, I agree with the Council and, subject to appropriate details at the reserved matters stage, the scheme would be acceptable in this respect.
17. Concerns are raised with regard to the capacity of the local primary school to take more children and that the doctor's surgery cannot take any more patients. However, these are not raised as reasons for refusal and the Committee Report identifies that Community Infrastructure Levy payments would result from the development to contribute towards identified infrastructure requirements.
 18. When considering any effect of the proposal on European habitat sites, the evidence indicates that the appeal site is beyond 7km from the Ashdown Forest Special Protection Area. This distance is such that there should not be a pathway effect for recreational disturbance from occupants of the site.
 19. In terms of potential impacts on the Ashdown Forest Special Area of Conservation (SAC), the Committee Report explains that the heathland habitat in the Ashdown Forest SAC is vulnerable to atmospheric pollution from several sources including vehicle emissions from motor vehicles. There is a potential impact pathway from increased traffic flows associated with new development on the roads which go through, or run adjacent to, the Ashdown Forest SAC. Many of the characteristic plants, mosses and lichens of heathland habitats are adapted to nutrient poor conditions and extra input of nitrogen can disadvantage these characteristic species in favour of others with a greater tolerance of higher nitrogen levels.
 20. The Council has explained that the quantum of development it proposed in the draft Local Plan in 2019 was such that Natural England was satisfied that this would not adversely affect the integrity of Ashdown Forest SAC and Lewes Downs SAC in terms of air quality impacts. The Committee Report explains that Natural England's advice regarding air quality is that this conclusion can be reached without mitigation measures being needed.
 21. The development proposed, when considered on its own and in combination with other schemes, is understood to be considerably less than the quantum of growth in the draft Local Plan. The Council explain that Natural England do not and have never objected to this application. In all these circumstances, it is concluded that the appeal proposal would not adversely impact on the integrity of protected European sites.

Planning Balance

22. The appeal site lies outside a defined settlement boundary as identified in the Local Plan and the Wealden Core Strategy Local Plan 2013 (the Core Strategy). Saved Policy GD2 of the Local Plan states that development outside of a defined development boundary will be resisted unless it is in accordance with specific policies in the Plan. Moreover, saved Policy DC17 of the Local Plan has specifies that new housing development will not be permitted within the countryside unless it is essential for agriculture, forestry or other rural enterprise needs, or has some other similar justification for a rural location (such as, rural affordable housing exception sites). The development proposal does not comply with any of the exception policies in the Local Plan for housing development outside a settlement boundary and would, therefore, fail the approach to the location of development across the development plan area. As

a consequence, the development should be considered to conflict with the development plan when considered as a whole.

23. The Council has confirmed that it is unable to demonstrate a 5 year supply of deliverable housing land. The information in the Committee Report is that a supply of about 3.92 years (or 78.5%) of housing land supply can be shown, and this would be a fairly substantial shortfall. In these circumstances, the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework, is engaged. This advises that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. In terms of the benefits of the scheme, the provision of four dwellings would provide a boost to the supply of housing, on a windfall site making efficient and effective use of the land. This would be achieved in a way that, subject to appropriate details at the reserved matters stage, would not harm the character and appearance of the area. The site could be considered to be previously developed land, being on garden land outside a defined settlement boundary. There would be social and economic benefits to the local economy during construction and in subsequent occupation. These would all be worthwhile benefits of the development and would have Framework support. On the basis that four units of accommodation would be delivered by the scheme, the cumulative benefits should be attributed moderate weight.
25. On the other hand, the site would be outside a settlement in land designated as countryside. Nevertheless, it would be located where it would form part of an existing grouping of housing that have the character of a small built up area. There is a footway, and it is a walkable distance, to the larger settlement area of Lunsford Cross and where I saw at my site visit other new housing appeared to have recently been built. I appreciate that the area of housing in the vicinity of the appeal site, and that at Lunsford Cross, does not have any services or facilities that would provide for day to day needs, and that Ninfield is not accessible by a footway.
26. There are, however, bus stops on the main road close to the proposed housing. The bus service is said to be limited, but the route is on the A269 that leads directly to Bexhill. While the private vehicle would, in all probability, be the main form of transport, I consider that the bus service would be a realistic option for some residents of the proposed housing to access Bexhill and its services and facilities as an alternative to the private vehicle. In this respect, and having regard to the Framework advice that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in decisions, the site has some reasonable accessibility credentials.
27. I am conscious that local residents have raised a dismissed appeal in Potmans Lane which concerned a development for housing. The Council has explained that that appeal was dismissed on a standard planning balance because, at that time, harm to the Ashdown Forest SAC was identified from traffic movements. With the present appeal the presumption in favour of sustainable development is engaged and this results in a different planning situation. The Council has also explained, in its Committee Report, that distinctions can be made between the two proposals because the present site is residential garden and not

agricultural land, is better located to the development around the crossroads at Lunsford Cross, rather than being detached from the village, and is closer to the bus stops. These are all matters in favour of the present scheme compared to the earlier appeal proposal.

28. The location of the appeal site outside a settlement is, because of the lack of an identified five year housing land supply, not definitive to the outcome of the appeal. It is likely that some sites outside settlements, on land defined as countryside, will be required to deliver the identified housing numbers. In this case, the Council has not objected to the appeal on the basis of the location of the site outside a settlement boundary, nor in terms of the level of accessibility of future occupants to services and facilities.
29. I have noted the concerns of local residents and the Parish Council that Ninfield and the surrounding communities have taken high levels of residential development and more new housing units than was allocated. However, with the Framework importance of boosting housing numbers and the lack of an identified housing supply across the plan area, the housing numbers in any one part of the development plan area should not be seen as a limit. In the circumstances of this case, I consider that the harm resulting from the location outside a settlement boundary, and the related policy conflicts, should be afforded moderate weight against the scheme.
30. It follows that when undertaking the balance under paragraph 11d of the Framework, I attach moderate weight to the benefits and moderate weight to the harms. It follows that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole. In these circumstances, the development should be considered to be sustainable development within the meaning of the Framework and this weighs very heavily in favour of approval.
31. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹.
32. In the light of the above analysis, I consider that other material considerations, including that the scheme represents sustainable development in terms of the Framework, are of such weight in favour of approval that they indicate that a decision should be made other than in accordance with the development plan. Accordingly, I conclude that the appeal should succeed.

Conditions

33. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. I have amended the wording where necessary in the interests of clarity or to meet the tests in the Guidance. The time limits for the submission of the reserved matters details and commencement of the scheme as proposed by the appellant are appropriate and would allow the housing to be delivered in a reasonable and timely manner. A condition specifying the approved plans is necessary in the interests of certainty.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

34. Conditions requiring the submission and agreement for foul and surface water disposal, and subsequent completion and maintenance, are necessary in the interests of flood risk and pollution control. It is necessary for the surface water disposal requirements to be a pre-commencement condition as it would be impractical to consider this matter after work had started and which could then affect options and solutions. A condition concerning how flood risk shall be managed during construction is necessary in the interests of the amenities of the area.
35. A condition is necessary to ensure that works take place in accordance with a Code of Construction Practice in the interests of the amenities of the area, including safety on the highway.
36. A condition is not necessary at this outline stage, as suggested by the Council, for the protection of trees, shrubs and natural features. Such matters can be addressed as part of the landscaping scheme at the reserved matters stage.
37. Conditions are necessary in the interests of highway safety for the car parking spaces to be laid out and retained for their designated purpose, and that the vehicular access is provided at the appropriate time and with the appropriate visibility splays.
38. A scheme is necessary to be submitted for biodiversity net gain in the interests of the retention and enhancement of biodiversity to accord with the requirements of the development plan and Framework. A condition is necessary for the submission and approval of details of acoustic design to respond to the location of the dwellings near to the A296, so that occupants within the properties would have suitable living conditions.

Conclusion

39. For the above reasons and subject to the listed conditions, I conclude that the appeal should be allowed.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing Site Plan – Drawing Number P2001
 - Access and Visibility Splays – Drawing Number P2003
 - Site Location Plan and Existing Block Plan – Drawing Number P2004
 - Site Layout as proposed Drawing Number 2234-PA-SI-11Rev C
 - Preliminary Ecological Appraisal (update to report of June 2021) – date: January 2022 / ref: EA/103721
 - Surface Water Drainage Strategy – date: 03 February 2022 / ref: 9758
 - Transport Statement – date: 01 February 2022 / ref: 22028
- 4) Before preparation of ground levels of the development approved by this permission, full details of the proposed means of foul drainage disposal shall be submitted to and be approved in writing by the Local Planning Authority. The approved drainage works shall be completed prior to the completion or occupation of any dwelling on site, whichever is the sooner.
- 5) Prior to the commencement of development, a detailed surface water drainage system shall be submitted to and be approved in writing by the Local Planning Authority. The surface water drainage system shall incorporate the following:
 - a. Detailed drawings and hydraulic calculations. Infiltration rates used in the hydraulic calculations should be based on testing undertaken in winter. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be infiltrated into the ground or limited to a rate agreed by East Sussex Highs (should connection to highway drain be required) for all rainfall events including those with a 1 in 100 (plus climate change) annual probability of occurrence. An allowance for urban creep (recommended 10% increase in impermeable area) shall be incorporated within the calculations.
 - b. The detailed design of the infiltration structures (crates and permeable pavement) shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.

- c. Details of the measures proposed to manage exceedance flows shall be submitted to the Local Planning Authority.
- 6) A maintenance and management plan for the entire drainage system shall be submitted to and be approved in writing by the Local Planning Authority before any construction commences on site to ensure the designed system takes into account design standards of those responsible for maintenance. The management plan shall cover the following:
 - a. This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains.
 - b. Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.
- 7) Details of measures to manage flood risk, both on and off the site, during the construction phase shall be submitted to and approved in writing by the Local Planning Authority. This may take the form of a standalone document or incorporated into the Code of Construction Practice for the development.
- 8) Prior to occupation of the development, evidence (including as built drawings and photographs) shall be submitted to the Local Planning Authority showing that the drainage system has been constructed as per the final agreed detailed drainage designs.
- 9) No work below ground level shall be carried out on site for the development hereby approved, until full written details for a Code of Construction Practice has been submitted to and be approved in writing by the Local Planning Authority. The Code of Construction Practice should detail good practice measures for site working to mitigate potential impacts from construction including protection of retained features and surface water bodies on or adjacent to the site, control of run-off, application of design controls for construction equipment and construction vehicles, vehicle routing, wheel washing facilities, sheeting of lorries during transportation of construction materials, provision of water sprays during delivery and dumping of sand and gravel, mixing and batching on wet rather than dry aggregate materials, minimum drop heights to be used for continuous and batch drop activities and waste disposal. The approved Code of Construction Practice shall be implemented throughout the period of work on site.
- 10) Before first occupation of the dwellings hereby approved, the car parking spaces and turning areas shown on drawing no 2234-SI-11-RevC shall be provided and the areas shall thereafter be retained for those uses and shall not be used other than for the parking/turning of motor vehicles.
- 11) No development shall be occupied until the vehicular access serving the development has been constructed in accordance with the submitted plans.
- 12) The access hereby approved shall not be used until visibility splays of 2.4m by 120m are provided to the southeast and 2.4m by 110m to the northwest. The visibility splays shall be maintained as such thereafter.

- 13) Prior to preparation of ground levels for the construction of the development hereby approved, a scheme for the enhancement of the site for biodiversity purposes, to include timescales for implementation and future management, shall be submitted to and be approved in writing by the Local Planning Authority. The approved scheme of enhancements shall be implemented in accordance with the approved details and thereafter so retained.
- 14) Prior to commencement of the development, an Acoustic Design Statement (ADS) in line with the requirements of PPG-Noise and ProPG: Planning and Noise, shall be submitted for approval to the Local Planning Authority. This shall demonstrate how good acoustic design is integrated into the overall design of the proposed development and how the proposed acoustic design responds to the specific circumstances of the site. The ADS shall confirm how the internal noise level guidelines in Figure 2 of ProPG will be achieved. Where relevant, full details of the design measures and building envelope specifications ensuring the required internal noise levels will be achieved, shall be included in the ADS. The agreed design shall then be fully implemented on site.

End of Schedule