



Appeal Decision

Inquiry Held on 23-30 April 2024

Site visit made on 30 April 2024

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th July 2024

Appeal Ref: APP/C1435/W/23/3335625

Land south of the A271 and east of the A22, Lower Horsebridge, Hailsham, East Sussex, BN27 4DN

- 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 Stephen Biart, Hertfordshire Holdings Ltd against the decision of Wealden District Council.
 - The application Ref WD/2022/3222/MAO, dated 7 December 2022, was refused by notice dated 30 June 2023.
 - The development proposed is up to 124 residential dwellings, associated infrastructure (including new access to the A127) and open space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is for an outline scheme with all matters reserved apart from access.
3. In the period between the Council's refusal of the application and the start of the Public Inquiry the Council and the appellant agreed revisions to the site access. These changes involve the addition of a bus stop and the addition of a proposed crossing point with 3m wide refuge island on Lower Horsebridge Road in close proximity to the recently permitted non car access to the proposed Wealden sports hub.
4. Other changes agreed between the main parties involve the removal of the proposed housing east of the access road within the site with additional drainage ponds and landscaping. Given the limited scale of changes included in these revised plans I am satisfied that no parties have been prejudiced by them.
5. This decision is made with reference to Site Access Layout 332110699_5501_SK009 Rev P02 and Site Location Plan 231703C/007. An illustrative masterplan TOR-XX-ZZ-DR-A-P010 Rev D as well as a Parameter Plan TOR-XX-ZZ-DR-A-P011 Rev C were included in the appellant's evidence. These two plans have informed my decision.

6. Following closure of the Inquiry, a completed S106 Agreement dated 22 May 2024 was submitted.
7. The Development Plan includes the 'saved policies' of the Wealden Local Plan 1998 (WLP), the Wealden District Core Strategy Local Plan 2013 (WDCSLP), the Affordable Housing Delivery Local Plan 2016 (AHDLP) and the Hellingly Neighbourhood Plan 2021 (HNP).
8. In March 2024 the Council commenced consultation on its Regulation 18 draft Local Plan (dLP). Through a Statement of Common Ground (SoCG) the main parties agreed that this is insufficiently advanced for its policies to attract material weight for this appeal.
9. Although the Council had four reasons for refusal it subsequently indicated that it would not be defending two of these relating to the site's location and the provision of infrastructure. From the evidence before me and my observations on site I am satisfied that the contents of the S106 agreement and the revised plan adequately address these reasons for refusal and I have not considered them further.
10. The Council included in its first reason for refusal references to policies WLP EN14, EN29 and SPO13. Given that this is an outline scheme reference to each of these policies is not relevant to the issues before me.
11. Finally, there was a brief discussion during the Inquiry on the potential impacts of the appeal scheme on protected sites including the Ashdown Forest SAC and SPA¹, the Lewes Downs SAC and the Pevensey Levels SAC and Ramsar. I am satisfied that the appeal scheme would not adversely impact on these protected areas and an Appropriate Assessment is not required.

Main Issues

12. In consideration of all the evidence the appeal raises the following main issues:
 - The location of the proposed development with regard to national and local policies
 - The effect of the appeal scheme on the landscape character and appearance of the area, and
 - The effect of the proposed scheme on heritage assets with particular regard to the setting of two listed buildings, Brook House and the Boship Farm Hotel.

These matters, including housing land supply, are taken into account in determination of the planning balance.

Reasons

Location of Development

13. The appeal site comprises grazing pasture which abuts the south east of Boship roundabout (the roundabout) at the junction of the A22, A267 and

¹ Special Protection Area and Special Area of Conservation

A271 (the Lower Horsebridge Road). Its southern and eastern edge is defined by the Lower Horsebridge Stream (aka Bull River), a tributary of the River Cuckmere which lies to the south of the site.

14. The site is divorced from surrounding settlements of Hailsham, Lower Horsebridge and Lower Dicker. Within its immediate context there is no identifiable pattern of development. Five detached houses and the listed Brook House lie on the north side of Lower Horsebridge Road, with a service area comprising Travel Lodge, Greggs, and petrol filling station on the northwest corner of the roundabout and the listed Boship Farm Hotel on its southwest corner.
15. Policy GD2 and DC17 seek to resist development outside settlement boundaries. Policy WCS6 seeks to maintain a settlement strategy for the rural areas predicated on a requirement to ensure that appropriate development protects, supports and increases the range of and quality of facilities and services to sustain rural living. This policy removed development boundaries for small settlements which formed part of the WLP, including those for Lower Dicker and Lower Horsebridge. The appeal scheme conflicts with these policies. Consistent with these policies WCS9 allows small scale affordable housing in rural areas. For the purpose of adopted policy the appeal site lies in the countryside.
16. Neighbourhood Plan policy LHB1 requires development in Lower Horsebridge to protect the historic development pattern, retain a sense of openness, identity and preserve rural character. This is reinforced by policy LHB2. The HNP defines the village area which excludes the appeal site but does not define the character area which is referred to in this policy. Given the broad interpretation of 'character area' included in the Village Character Assessment, I am satisfied that the site lies within this² and not within the village character area for Lower Dicker. Accordingly, policy LHB1 applies directly to the appeal scheme.
17. Whilst the LVA³ prepared for the dLP identifies a 'perceived sense of coalescence' between Lower Dicker and Hailsham, development is not contiguous. There is no intervisibility between the site and Lower Dicker largely because of the matured landscaping on the Boship roundabout, the gap between development in Lower Dicker and the service area on the north side of the A22 and on the south side, where ribbon development extends towards the extensive site of the Boship Manor Hotel. Furthermore, there are extensive areas of open space separating the site from the northern edge of Hailsham at Welbury Meadows and Solent Crescent. The site lies over 100m from the edge of Lower Horsebridge.
18. The appellant compares the appeal site's location with those sites contiguous with North Street, Lower Horsebridge where planning permission was recently granted⁴. However in contrast to these sites the appeal scheme would be divorced from existing development representing an outlier of development.

² Appx D of Ms Hall PoE

³ Landscape and Visual Appraisal November 2023

⁴ WD/2021/2056/MAP and WD/2019/1575/MAO

19. The appellant advances an argument that the site lies within 'greater Hailsham', demonstrated by the Council's recent decision to grant permission for the sports hub together with the proposed employment allocation at Knights Farm included in the draft Local Plan. However, whilst the officers report on the proposed Sports Hub refers to the site as 'an urban fringe location' and 'on the edge of Hailsham' these descriptions do not amount to policy. Given the status of the draft Local Plan, the employment allocation for Knight's Farm west does not at this stage confirm a change in policy determining the future direction for this area.
20. I conclude that the location of the appeal scheme would conflict with policies GD2, DC17, WCS6 and WCS9 and HNP LHB1 and LHB2 and Paragraph 180b) of the Framework. Together these policies seek to prevent development in areas outside the defined settlement boundaries and require the protection of the countryside.

Landscape Character and Appearance

Landscape effects

21. The site, comprising around 7.7ha, sits on a raised plateau above the Horsebridge Stream. It is open with its northern and western boundaries along the A271 and A22 formed by clipped hedgerows. Its southern and eastern boundaries are largely open and the site can be read as contiguous with the field to the east and the corridor of the River Cuckmere. This runs around the southern and eastern edge of Lower Horsebridge and separates Lower Horsebridge from Hailsham to the south. Pole mounted electricity lines cut across the site and there is a telecommunication mast just beyond the sites south west boundary by the A22.
22. Within the site, development is proposed towards its north western edge close to the roundabout retaining those areas which lie within Flood Zones 2 and 3 for informal recreation and biodiversity enhancement.
23. The site lies in LCA⁵3A Uckfield-Hailsham Wooded Clay Vale, described as a gently rolling landscape dissected by river valleys which include the Cuckmere with a pattern of rural settlements. The study identifies that towards the A22 there are areas of suburban character around Lower Dicker with the development of Hailsham into the LCA being recognised as a force for change.
24. The River Cuckmere is an important landscape feature, identified as such within many of the studies within the Low Weald area. Given the physical extent of the river corridor its geography is too broad to be used for assessment purposes and does not form a valued landscape for the purposes of Paragraph 180a) of the Framework. Assessment of the appeal site's landscape value, therefore requires consideration against published guidance⁶.
25. The Council and appellant deploy different landscape character areas to inform an understanding of the impact of the scheme on landscape receptors. However, those areas which include the Cuckmere corridor and

⁵ Wealden Landscape Character Assessment May 2022

⁶ Landscape Guidance Technical Note 02/21

part of Hailsham West assessment unit which include areas west of the A22 are too broad in area to allow a clear assessment of the impact of the appeal scheme.

26. In contrast the boundaries of LC1, identified by the appellant, which is drawn around the northern edge of Hailsham, Lower Horsebridge, the A22 and A271 allows an understanding of the potential landscape impacts of the scheme. This area includes landscape features in common with the LCA3A. These includes mature trees along the River Cuckmere, isolated field trees, boundary hedgerows, a copse, fields in use as pasture and a recreational path and settlement edge to Lower Horsefield.
27. Whilst the surrounding roads are not rural, and the pattern of development associated with the service area is not characteristic of the LCA, the site can be appreciated as a part of the rural setting around Lower Horsebridge and as part of the Cuckmere corridor. Based on this assessment the site has a medium landscape value.
28. Whilst the appellant describes the site as urban edge or urban fringe these descriptions are not included in LCA3A or the Hailsham West Assessment unit. Instead the most recent study⁷ recognises that the land between Lower Horsebridge and Hailsham has a moderate to high sensitivity to medium scale residential development. This acknowledges the high levels of noise generated by the traffic volumes along both the A271 and the A22 which reduce its sensitivity. The site's use for pasture and its contribution to the rural landscape is, however, unaffected by these extraneous factors. Accordingly, the Landscape Guidance for the LCA3A requiring the conservation of streamside woodlands and copses and the conservation of the rural settlement pattern applies.
29. The appellant places significant weight on the 2017 Assessment Study prepared for the withdrawn local plan which identified that small scale development located in the northwest corner of the site could retain the strategic gap between Lower Horsebridge and Hailsham. However this study did not refer to major development of a scale comparable to that of the appeal scheme.
30. The parameter plan submitted with the appeal identifies up to 124 dwellings on 2.6ha located towards the northwest corner of the site within Flood Zone1, accessed by a new road taken from the A271 within around 30 metres of the garden boundary of Brook House. The development of this road together with the proposed shared cycle/pedestrian way would involve the loss of around 200m of perimeter hedgerow. The plan indicates that storey heights would be up to 9.5m from FFL or 2 storeys in the southern half of the site but up to 12m from FFL in height or 2.5-3 storeys along the frontage to the A271 and the Boship roundabout.
31. Around the site there would be SuDS incorporating ponds whilst away from the development platform the surrounding areas within Flood Zone 2 and 3, comprising 4.1ha are proposed as public open space, landscaped to enhance biodiversity and allow public access.

⁷ Wealden Strategic Landscape Sensitivity Assessment November 2023

32. The development platform is constrained by the extent of the flood zone which pushes development towards the north west corner of the site which in turn is constrained by the noise of traffic from the A22. It is understood that this has resulted in the parameters for 2.5-3.0 storeys in the northern section of the site lying along the road frontages. In turn these blocks will shield the remainder of the scheme from noise from the roads. The scheme's eastern edge is determined by both the flood zone and the minimum distance to achieve the required sight lines for the access given the proximity to the Boship roundabout.
33. Both the density of the scheme and its form suggested by the illustrative layout would be uncharacteristic of the area surrounding the site. It is unclear how the dwellings removed from east of the access in the revised layout plan could be accommodated easily within the suggested parameters which have not changed since the submission of the application. Furthermore, the appellants accept that there would be insufficient space on site to provide youth and adult play space although this could be resolved through financial contributions included in the S106 Agreement for off-site provision.
34. I acknowledge that this is an outline scheme with reserved matters of layout, scale, landscaping and appearance to be determined at a later stage. However, the constraints beyond the boundaries of the development platform place limitations on what could be achieved with the result that a scheme for up to 124 dwellings would contrast starkly to both the site and its immediate landscape context. This would conflict with the requirements of Paragraph 130 of the Framework.
35. Given the site's medium value and the size of the proposed scheme it has a high level of susceptibility to the extent of change proposed. The proposed area of housing development and proposed access would have a substantial impact on the appeal site being permanent and irreversible.
36. The proposed landscape mitigation measures, even after 15 years would not fully achieve their aim of softening and screening the scheme or provide a natural edge to the river corridor. Whilst the appellant sought to favourably compare the landscape impacts of the appeal scheme with the established landscaping for the Welbury Way/Solent Crescent development this integrates established hedgerows. These are not features of the eastern and southern edges of the site. Given the form of development indicated by the parameter plans the absence of similar established landscape features would further limit the effects of mitigation.

Visual effects

37. For the purposes of this assessment, I have focused on the visual effects of the scheme at fifteen years when mitigation planting would have started to mature. Both parties accept that the most sensitive receptors are local residents, users of the PROWs⁸ including those on the designated Weald Way, a designated footpath, and surrounding highways. A series of viewpoints (VPts) based on Figures 16-19 included in the appellant's landscape evidence were used to assess these effects.

⁸ Public Right of Way

38. Whilst no assessment was made from within the residential properties lying opposite the site, given that they face directly towards the appeal site their occupiers are sensitive receptors. Currently occupiers experience views across an open field with medium distance views towards the Weald Way and housing in Welbury Meadows and Solent Crescent. Based on the parameter plans, these occupiers would experience the most significant adverse effects on their views given the extent of proposed frontage development. Although a broad band of landscaping is included in the parameters, the appellant's evidence demonstrates the limitations of this mitigation. The proposed blocks of dwellings would still be highly visible from the residential properties.
39. Although the footway along the south side of Lower Horsebridge Road is not well used, its users would also experience similar adverse effects to those of the residential occupiers although this would be slightly diminished because of the kinetic effects of walking.
40. On the approach to the site from the east along FP HEL/12/1, users see a broad open area of land. The existing copse within the site breaks the impact of views of the A22 with only a faint outline of lighting columns visible.
41. As the FP turns north around the recreation ground, a panorama opens up of the whole site framed by trees on the traffic island, the outline of the perimeter hedges along the road frontages and housing on Lower Horsebridge Road including Brook House. Looking south there are views of housing in Welbury Meadows/Solent Crescent. However, the prevailing view of the site would be of a field used for pasture.
42. The site's development, whilst obstructing existing views of signage and traffic would introduce housing which would be seen clearly from the footpath. The existing copse of mature trees partially breaks views of the proposed housing until the path directly turns towards Lower Horsebridge Road. At this point the user would have unobstructed views of the proposed housing which would be only partially broken by the proposed mitigation planting. Despite the kinetic experience of users of the FP they would experience adverse impacts.
43. Existing views towards the site from the south along the Weald Way are intermittent, broken partially by the copse of mature trees within the site and several field trees. Whilst there are distant views of the Shell garage, telecommunications mast and housing on Lower Horsebridge Road the prevailing views is off a pastoral field. On development of the appeal scheme, the proposed housing would be seen from these points although its visual impacts would be limited by the existing copse and field trees and the proposed mitigation planting.
44. The appellant's evidence includes a study of the landscape and visual impact of the permitted Knights Farm sports hub and the employment allocation included in the draft plan. In the event that both these sites are implemented there would be impacts on the appeal site, but these would not be so great as to significantly diminish its existing rural qualities.

Conclusions on character and appearance

45. The appeal site forms part of the Cuckmere corridor which defines the southern edge of Lower Horsebridge. It is distinctive in how it frames the settlement and contributes to the area's character and distinctiveness. The Council identifies that the appeal scheme would conflict with policies WLP EN8, and EN27 and policies WCS13 and HNP policy LHB1.
46. Through each of these policies there are common themes with policy WLP EN8 (1), (3) and (4) and EN14 requiring the conservation of areas of countryside and the retention of landscape features including hedgerows and trees. Furthermore, policy HNP LHB 1 seek to prevent the loss of openness and to preserve the rural character of the area through measures such as protection of the existing field pattern. In addition, Policy WCS13 seeks to protect and increase the District's Green Infrastructure.
47. The scheme would result in the loss of a field for housing and whilst the larger part of the site includes landscaping and flood mitigation these are not natural features which could easily form part of a natural landscape. Despite the influence of the surrounding roads the site can be appreciated for its rural qualities and forms part of a larger landscape comprising the Cuckmere corridor.
48. There would be adverse visual impacts experienced by occupiers of the residential properties on Lower Horsebridge Road and from users of the footpath to the east of the site. Proposed mitigation planting would be insufficient to limit the adverse impacts arising.
49. It is clear from supporting text that policy WCS13 despite its focus on green infrastructure includes rural landscapes. Whilst the scheme proposes enhancements to those parts of the site retained as open space in line with the proposed Biodiversity Opportunity Area the appeal scheme would involve the loss of a rural landscape in conflict with this policy.
50. I conclude that the appeal scheme would adversely impact on the landscape and visual appearance of the area in conflict with policies WLP EN8 and EN27(1) and policies WCS13 and HNP LHB1.

Heritage Assets

51. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers, to have special regard to the desirability of preserving listed buildings or their setting. The Framework defines 'setting' as the surroundings in which a heritage asset is experienced.
52. Historic England's guidance⁹ advises that the setting itself is not a heritage asset. Its importance lies in what it contributes to the significance of the heritage asset or the ability to appreciate that significance.
53. Both main parties accept that the appeal site lies in the setting of two listed buildings, Boship Farm Hotel and Brook House.

⁹ The Setting of Heritage Assets, Planning Note 3

Boship Farm Hotel - Grade II

54. Boship Farm Hotel is a timber framed two storey building with attic which dates from the mid seventeenth century. It features 3 gables containing attic windows with a tiled roof and rusticated window surrounds with white painted barge boards.
55. Its significance relates to its use as a farm house with associations with the Fuller family who were successful in the local brick and pottery industry during the seventeenth and eighteenth centuries. Tithe maps indicate that the appeal site and land to the east was part of the farm until the 1970s.
56. The use of the building as a farmhouse continued until the 1930s when a tea room is recorded and by the end of that decade it was being used as a guest house. Since this time the building has been extended to provide guest rooms with free standing buildings for additional guest accommodation. The land around the hotel is laid out with an extensive array of paraphernalia including shelters, a series of ornamental ponds and a menagerie to the rear of the building.
57. Ancillary agricultural buildings were demolished on the dualling of the A22 in the 1950s as the hotel use developed. Access to the building from the A22 west of the roundabout serves an extensive parking area to its front.
58. The building is around 150 metres from the appeal site and critically it is separated by the dualled A22. The breadth of this road and the speed and noise generated by large volumes of traffic severely impact on how the appeal site contributes to the significance of the heritage asset and how it can be appreciated.
59. The use of the building as an hotel has broken the functional relationship with the pastoral use of the appeal site. However, there are still visual associations between the appeal site in its pastoral location and its function as an hotel, but these are compromised by the A22. Whilst the asset can be seen from the appeal site, views are compromised by the building's orientation and existing tree belts along the road.
60. Whilst the relationship between the hotel and the appeal site is already diminished, development would result in the loss of the pastoral use of the site. In turn this would erode an understanding of the listed building as a farmhouse impacting on the ability to visually appreciate it, thereby harming its significance.
61. For these reasons, I find that the appeal scheme would, in the terms of the Framework, cause less than substantial harm to the significance of the designated heritage asset. I consider this to be at the lower end in the less than substantial range of harm. The extent of harm requires further consideration against the public benefits arising from the appeal scheme as part of the balance required by Paragraph 208 of the Framework.

Brook House - Grade II listed

62. Brook House dates from around 1830 and is Grade II listed. It is separated from the five detached dwellings to the west by a narrow paddock and from Lower Horsebridge by a field to the west of Lower Horsebridge Stream.

63. The building was constructed as a private dwelling. In plan form it is a 'half H' with featured gables and chimney stacks and has a long front wall to the A271. Its front elevation includes Flemish bond brickwork and scalloped tile hung gables with a detailed pedimented porch. The building was associated with a small holding on land which extended to its north and it is understood that at some time in the past it had a role in the administration of farming across the Fuller estate.
64. Despite the association with the Fuller estate Brook House there is no evidence before me of any specific historical or functional links to the appeal site. The building's significance is related both to the architectural detailing of its southern elevation and location reflecting the area's historic dispersed rural pattern of development.
65. Whilst there is housing to the west and on the edges of Lower Horsefield, Brook House retains a singular presence reinforced by its elevation above the land to the south which includes the appeal site. Views of the open countryside allow an appreciation of its significance. It can be seen from both the Weald Way and FP HEL12/1 to the east of the appeal site. This quality is harmed by the traffic volumes along the both the A271.
66. Distant views from along the A271 are limited by both the building's set back from its frontage and surrounding trees. The elevation is only fully appreciated from directly in front by the A271. The proposed highway works would alter the realignment of the footway harming the appreciation of the architectural character of the asset's southern elevation. From within the appeal site given the form of detailing, appreciation of this southern elevation diminishes away from the A271.
67. The appeal scheme would erode the rural setting of Brook House through the location of the proposed development. Although no part of the proposed housing would directly face the asset an appreciation of its setting from the south would be significantly affected.
68. From both FP HEL/12/1 and the Weald Way the setting of Brook House would be affected by the location of the proposed development. Presently, whilst only a limited appreciation of the setting of Brook House can be understood from points along the Weald Way the appeal scheme would block views restricting the ability to appreciate its significance.
69. From FP HEL/12/1 the setting context includes the appeal site. This would be severely harmed through the proposed housing and access which would introduce development that would be at odds with the pastoral setting of Brook House. Any vestige of isolation would be harmed given that all views towards the building would include large scale housing development.
70. I acknowledge that an appreciation of the building's isolation would be affected by the recently granted permission for the Sports Hub¹⁰ which would lie to its north. This scheme would introduce floodlit MUGAs and artificial football pitches. These would be visible during both the day and evenings, framing views of Brook House in short and medium distance views from across the appeal site.

¹⁰ Application No WD/2023/2100/DC

71. Whilst other harmful development does not justify further harm, the existing context is a relevant negative factor in the setting of Brook House. Taking into consideration all that I saw, I find that the appeal scheme would, in terms of the Framework, cause less than substantial harm to the significance and setting of this designated heritage asset. I consider, these impacts would be of at a moderate level within the spectrum of less than substantial harm given the open setting has been a characteristic of this site since the nineteenth century and relates, albeit indirectly, to its function as a rural small holding.
72. I acknowledge the importance of published guidance¹¹ on the cumulative effects of small scale changes on the significance of a heritage asset. The changes introduced by the Sports Hub are not small in scale and would affect the perceived isolation of Brook House which is an element of the character of its setting.
73. The appeal scheme would erode the setting of Brook House, harming its significance. The harm caused requires further consideration against the public benefits arising from the appeal scheme as part of the balance required by Paragraph 208 of the Framework.

Other Matters

Infrastructure

74. The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 57 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.
75. The negotiation of planning obligations required to support infrastructure is supported by Policies CS1 and WCS7. The Council's fourth reason for refusal rested on the absence of planning obligations to secure affordable and custom/self build housing. These have been subsequently included in a completed S106 Agreement dated 22 May 2024.
76. The agreement includes covenants in favour of the Council requiring that 35% of all dwellings are affordable. Within this the Council has agreed a tenure mix 25% First Homes subject to a mortgage cap of £200,000, 40% Social Rented, 23% affordable rented and 12% shared ownership units. This is supported by Policy AFH1 of the Affordable Housing Delivery Plan 2016 and Paragraph 64 of the Framework. This obligation meets the three tests given the extent of housing need in the District.
77. A covenant in favour of the Council requires that 5% of all units are Self and Custom Build plots. Whilst the Council has no specific policies which would support this obligation the Self Build and Custom House Building Act 2015 and the Regulations 2016 requires provision of this form of housing. This is supported by Paragraph 63 of the Framework.
78. A covenant requires a contribution of £1,000 per dwelling towards the Major Road Network (MRN) programme for improvements to the Boship

¹¹ Historic England GPA2

roundabout. The amount per dwelling is derived from work completed for the road infrastructure requirements to support growth projections included in the withdrawn Local Plan. Whilst the County Council has made a bid to the Department of Transport this requires a contribution of 15% of funding from third party sources.

79. However, the main parties agree that there is no objection to the proposed scheme on highway capacity¹². The County Council considers that the site's status as a windfall site¹³ requires mitigation and that the contribution would be consistent with the requirement for 15% of funding for the MRN from local sources. However, given the agreed position between the parties on highway capacity this contribution is unnecessary failing the requirements of Regulation 122 of the CIL Regulations and Paragraph 57 of the Framework. By virtue of Paragraph 2.3 of the S106 Agreement, it should cease to have effect were I minded to allow this appeal.
80. The S106 Agreement includes capital contributions in favour of the Council of £1,100 per dwelling for bus services at £136,400 from the whole scheme. This would be in particular directed towards sustaining the new Regency bus service (service 28) and continuation of bus service 54; both these services have stops on Lower Horsebridge Road and could serve occupiers of the site. Other covenants require the provision of real time passenger information signs at a cost of £24,000 to be included in the bus stops on Lower Horsebridge Road. These measures would be consistent with Paragraph 110 of the Framework.
81. A covenant in favour of the Council includes a one off index linked payment of £25,000 towards the costs of local walking and cycling routes. This is consistent with the Local Cycling and Infrastructure Plan and would be directed towards routes 220, 221 and 310. These measures would be consistent with Paragraph 110 of the Framework.
82. A range of other measures are included such as bus stop clearways serving the development at a cost of £2,000 and a Traffic Regulation Order of £5,000 to enable the extension of the 30mph zone west of its current location on Lower Horse bridge Road. A Travel Plan audit fee of £6,000 is included in the s106. I am satisfied that the fee is appropriate.
83. Requirements for the range of measures relating to the design of the proposed access and highway infrastructure are also included in the S106 Agreement. These are consistent with locally adopted policies and the Framework.
84. The S106 Agreement includes a requirement of £32.30 per square metre (derived from requirements for youth and adult play space contributions) of floorspace linked to the number of bedrooms within the scheme which may be directed towards open space within the site. This is consistent with Policies LR1, LR3 and LR5 of the Wealden Local Plan and WCS13 of the Core Strategy and the Fields in Trust. It is evident that whilst play space will be provided on site an appropriate amount of space required for youth and adults cannot be provided within the areas of the Flood Zones 2 and 3 and

¹² Statement of Common Ground - Highways

¹³ ID 13

therefore a commuted sum for off-site provision is included. This is consistent with policies WLP LR1, LR3 and LR5.

85. The S106 Agreement includes the provision of infrastructure, which is necessary, directly required and fairly and reasonably related in scale to this development. I am satisfied that apart from the covenant directed towards the MRN, each of these fall within the provisions of Regulation 122(2) of the CIL Regulations and Paragraph 57 of the Framework.

Planning Balance and Conclusions

Benefits of the Scheme

86. The appeal scheme includes a number of benefits considered as part of the planning balance.

Housing

87. Common ground between the parties is that the housing land requirement, including the 5% buffer is around 7,200 dwellings for the period 1 April 2023-31 March 2028. Guidance¹⁴ requires that the four years deliverable housing land supply (HLS) is to be demonstrated against a 5-year requirement.
88. The Council confirmed that the Regulation 18 draft plan does not contain sufficient housing allocations to meet the 4 years housing land supply (HLS) required by Paragraph 226 of the National Planning Policy Framework (the Framework) and to address the anticipated shortfall the consultation includes a 'call for sites'.
89. The parties differ in their assessments of supply with the appellant and Council estimating 3.14 and 3.83 years respectively. Accordingly, if I were to accept the Council's evidence there would still be a shortfall.
90. The Council has consistently under delivered against its housing targets for the last five years (2018-22) with annual housing land supply assessments not compliant with the Framework during the same period¹⁵. Whilst its Housing Action Plan sought to address this it still does not have a Framework compliant amount of housing land. A plan led solution to this issue is still some years away demonstrated by the shortfall in housing allocations included in the Regulation 18 local plan consultation.
91. For the purpose of this appeal, I have adopted the appellant's position regarding the housing land supply shortfall. That should not be interpreted, however, as any indication that I necessarily agree with that position. I simply have adopted the lower figure as a worst case scenario to inform the planning and heritage balance.
92. Furthermore, the appellant's evidence¹⁶, uncontested by the Council, demonstrates that the chronic shortage of housing land has undermined the delivery of affordable housing. The affordable housing need for the period 2019-2039 is around 850dpa although on average only 160dpa have been

¹⁴ PPG - ID 68-055-20240205

¹⁵ Ms Mulliner PoE

¹⁶ Mr Elliott PoE

provided since 2013/14. This situation has partly contributed to around 740 people on the housing register. Furthermore, there is a large affordability ratio of 11.8 for the district when compared to the figure for England of 8.3.

93. Given that it is unclear how and when this matter would be resolved the inclusion within the appeal scheme of up to 82 market homes and 35 affordable homes would partially address these matters in line with Paragraph 60 of the Framework. These benefits are accorded significant weight.
94. Furthermore, the scheme includes plots for up to seven self build and custom build housing. I acknowledge that the Council currently experiences only a limited demand for this type of housing¹⁷ but there is a statutory requirement for continuing provision. This provision is consistent with Paragraph 63 of the Framework. Accordingly, I accord this benefit moderate weight.

Economy

95. The appeal scheme would result in economic benefits derived directly from employment of construction workers involved in delivering this development and also indirectly from the increased spend in local shops and services arising from the proposed occupants of the scheme. These would be consistent with Paragraph 85 of the Framework. I accord these benefits moderate weight.

Connectivity

96. Whilst the highway proposals included in the scheme are directly linked to the development of the appeal site there would be benefits to the wider public who walk or cycle along Lower Horsebridge Road. The new traffic island and crossing point together with the relocated bus stop would also support pedestrian movement to/from the Knights Farm sports hub.
97. Whilst these improvements are primarily designed to support the scheme they have wider benefits which can be accorded limited weight.

Biodiversity Net Gain

98. Were I minded to allow this appeal, a suggested planning condition would enable a 10% net gain in biodiversity values. There is no policy requirement for this scheme to deliver a Biodiversity Net Gain of 10% given the date of submission of the original application for planning permission. However, the proposed scheme would include those areas west of the Horsebridge Stream within Flood Zones 2 and 3 allowing an opportunity to develop a scheme which reflects the Council's Biodiversity Opportunity Area and could allow public access to an area closed from the public. This measure would be consistent with Paragraph 186d) of the Framework which I accord limited weight.

Heritage Balance

99. The heritage assets include the two listed buildings of Boship Farm Hotel and Brook House that need consideration in the Heritage Balance.

¹⁷ Ms Turner PoE

100. The harm resulting from the location of the appeal scheme to the significance of the Boship Farm Hotel would be less than substantial and lies within the low range of that scale of harm. I find that the harm arising to the significance of Brook House whilst less than substantial would be within a moderate range of the scale of that harm given the proximity of the development platform and access. Nevertheless, less than substantial harm does not equate to less than substantial planning objection and bearing in mind the statutory duty set out in the Planning (Listed Buildings and Conservation) Act 1990 the harm still attracts considerable importance and weight.
101. In both cases I find that the harm would be overcome by the social, economic and environmental public benefits provided in the appeal scheme that I have identified above. The harm which I have identified which conflicts with SPO 02 of the WCS and LHB1i and iii) is overridden by the outcome of the balancing exercise required by Paragraph 208 of the Framework.

The Development Plan

102. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.
103. Both main parties acknowledge that there is an undersupply of housing land. In these circumstances there is a presumption in favour of sustainable development as defined by the Framework.
104. The fact that policies are deemed as out of date does not mean that they carry no weight. To carry weight policies must be consistent with the Framework, as explained in Paragraph 225, which amongst other things, states that the closer that local policies are to those in the Framework, the greater weight that may be given to them. As such it is perfectly possible for policies which are deemed as out of date by reason of an inadequate land supply to still carry significant weight.
105. Those policies which I consider relevant relating to reasons 1 and 2 of its decision are most important for determining this decision and include GD2, DC17, EN1, EN2, EN8, EN27 and TR13 of the WLP, strategic objectives SPO2 and policies WCS6 WCS9, WCS12, WCS13, WCS14 of the Core Strategy and policy LBH1 and LHB2 of the HNP.
106. The policies of the WLP are around 26 years old. Whilst the settlement and housing policies GD2 and DC17 seek to maintain the principles of sustainable development as expressed through policy EN1 they are predicated on a housing land supply position which has been superseded. The Council accept that only limited weight can be accorded to these policies¹⁸. Given that they would restrict the supply of housing sites coming forward, I accord the conflict between the appeal scheme and these two policies only limited weight.
107. Strategic objective SP07 and Policy EN2 seeks to maintain the existing settlement pattern to reduce the generation of significant travel movements between settlements which do not have access to public transport. However,

¹⁸ CD11.6

despite the site's location beyond the settlement boundaries it would allow access by walking, cycling and public transport to services and facilities. There is no conflict with this policy. Neither do I find conflict between the appeal scheme and policy TR13 which seek to ensure a range of transport modes and prevention of unacceptable traffic conditions.

108. Policy EN8 seeks to preserve the low rolling agricultural landscape of the Low Weald, within which the appeal site lies. Policy LHB1 iii) and iv) aim to protect the historic development pattern and prevent an erosion of openness and rural character. Whilst the scheme includes over 4ha of multifunctional greenspace this would contrast with the site's existing open and rural landscape. The wider rural setting of Lower Horsebridge would be significantly compromised. These policies accord with the Paragraph 180b) of the Framework which recognises the intrinsic character and beauty of the countryside. I accord significant weight to the scheme's conflict with these policies.
109. Policies EN27, LHB1 and LHB2 include a range of measures which development should address. Each accord with Paragraph 135a-c) of the Framework which requires development to be sympathetic to local character and to be of high quality. Whilst this is an outline scheme the parameters suggest that the scheme would adversely contrast with the character and appearance of the area. Accordingly, I accord significant weight to the conflict between the appeal scheme and these policies.
110. Policy LHB1i) is broadly consistent with the Framework. The level of harm on the designated assets has been already considered with reference to the public benefits of the appeal scheme.
111. I do not find, as the appellant suggests, that the policies and objectives of the WCS are undermined because the Site Allocation DPD was not completed. The scheme conflicts with the Core Strategy's (WCS) strategic planning objectives SPO2 and SPO3. The intent of these broadly adheres to the Framework's policies which seek to protect heritage and its environmental objectives. Policy WCS 14 reiterates the basis of the Framework and is neutral in this consideration.
112. Policy WCS6 defines a settlement hierarchy as part of the rural areas strategy and includes housing growth figures for different settlement categories. Given the site's location in the countryside and the essential thrust of the policies of the Framework which do not protect the countryside for its own sake I accord limited weight to the conflict with the appeal scheme.
113. Policy WCS9 concerns Rural Exception sites. The essential thrust of this policy is to allow the development of affordable housing on sites outside development boundaries to meet local housing needs in the settlements they relate to. Whilst the scheme could address local housing need the appeal site is unrelated to any specific settlement. I accord limited weight to the conflict between the appeal scheme and this policy.
114. Whilst Policy WCS13 is consistent with Paragraph 180b) of the Framework in recognising the intrinsic beauty of the countryside, the scheme includes access to landscaped areas proposed for those areas within flood Zones 2

and 3. The scheme's conflict with this policy can only be accorded limited weight.

115. Were I minded to allow this appeal, the suggested planning condition on biodiversity would have ensured the scheme would be compliant with Policy WCS12 in protecting biodiversity.
116. In summary, I accord only limited weight to the conflict between the appeal scheme and policies WLP GD2, DC17, EN1, WCS 6, WCS9 and WCS13 but accord significant weight to the conflict with policies WLP EN8, EN27 and HNP LHB1 and LHB2. This results in conflict with the Development Plan as a whole.

Conclusions

117. I have considered the benefits of the appeal scheme particularly those relating to the provision of market, affordable and custom/self build housing and its impacts on the local economy. While these are significant benefits the harm arising from the size of the appeal scheme in the proposed location would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not therefore benefit from the Framework's presumption in favour of sustainable development.
118. For the reasons given above, I find that the appeal scheme would conflict with the Development Plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the Development Plan should be reached. I therefore conclude that the appeal should be dismissed.

Stephen Wilkinson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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She called

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INTERESTED PERSONS:

Mrs M Bennett

Local Resident

Mr D White

Chair, Hellingly Parish Council and Ward Member
Wealden DC

Inquiry Documents

ID1	Note on the evolution of the plans on which the decision will be based 18 April 2024
ID2	WDC HRA Matrix
ID3	Email from NE re HRA dated 10 April 2024
ID4	Email from NE re HRA dated 17 April 2024
ID5	Undated note from the Council on impacts on European sites (presented to the Inquiry on 26 April 2024)
ID6	Joint summary table on LVIA
ID7	Appellant Openings
ID8	Council Openings
ID9	Written representations from Mr David White, Chair of Hellingly Parish Council
ID10	Appeal decision APP/R3650/W/22/3301692
ID11	Figure 12A from M Bolger
ID12	Masterplan TOR-XX-ZZ-DR-A-P010 Rev D
ID13	ESCC - Note on formulae for highways and bus contributions
ID14	Draft S106 Agreement
ID15	Summary of draft S106 Agreement - Acuity Law
ID16	Planning Conditions including the additional condition BNG
ID17	Judgement re Village Concerns
ID18	Planning decision and S106 Knight Farm Sports Hub
ID19	Site visit itinerary
ID20	Council Closings
ID21	Appellant Closings