



## Appeal Decision

Site visit made on 23 July 2020

**by William Cooper BA (Hons) MA CMLI**

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

**Decision date: 7<sup>th</sup> August 2020**

**Appeal Ref: APP/C1435/W/19/3235754**

**Land adj Old Orchard House, Horebeech Lane, Horam TN21 9DZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr C Baron, Chailey Homes Ltd against the decision of Wealden District Council.
- The application Ref: WD/2018/0509/MAJ is dated 2 March 2018.
- The development proposed is erection of 58 dwellings, associated garages and infrastructure.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council, as the local planning authority, to determine the application.
3. The Council submitted the draft new Wealden Local Plan (LP2) for Stage 1 examination in January 2019. However, in December 2019 the Council was informed that the submission failed to meet a number of requirements for legal compliance. As a result, in February 2020 the Council withdrew the draft LP2, with the intention to produce a new Plan. As such, adopted local plan documents, including the saved policies of the Wealden Local Plan (1998) (LP1), and the Wealden District (Incorporating Part of the South Downs National Park) Core Strategy Local Plan (2013) (CS), constitute the development plan.
4. The appellant has submitted a revised site layout<sup>1</sup> and house type illustrations with the appeal. The changes amount to minor amendments. As such, no interests would be prejudiced by my consideration of the amended scheme.
5. A signed, dated and agreed Unilateral Undertaking (UU) provides for a Self-Build and Custom-Build Plots Scheme to be submitted to the Council for approval, prior to commencement of development. The UU also specifies 35% of the total dwellings as affordable housing units, and submission and approval of a Cuckoo Trail Link Scheme, and Children's Play Area Scheme.

<sup>1</sup> Site Layout Drawing No. 3278:01 Revision U.

## **Background and Main Issues**

6. The main parties consider that the proposed development should be permitted<sup>2</sup>. Notwithstanding this, residents have expressed concerns regarding traffic and environmental sustainability, character and appearance of the area, and neighbouring living conditions. In the light of the above, the main issues are:
  - whether the location of the proposed development is suitable, with particular regard to reliance on the private motor car, and the effect of the proposed development on
    - the character and appearance of the area
    - living conditions of neighbouring occupants of Old Orchard House, with particular regard to outlook, privacy and light, and
    - highway safety.

## **Reasons**

### *Suitability of location*

7. The site is a field located on the south side of Horebeech Lane. Residential properties adjoin the site's western and eastern boundaries. The Cuckoo Trail footpath, cycleway and bridleway is situated to the south-west of the site.
8. It is not disputed that the proposed development would be outside Horam's village settlement boundary as defined in the LP1. This would conflict with Saved Policies DC17 and GD2 of the LP1. That said, the weight the 1998 boundary definition carries is tempered by the consideration that, according to the Council, subsequently proposed Core Strategy growth levels would entail greenfield release beyond this boundary.
9. Horam is identified as a Local Service Centre in the CS Settlement Hierarchy. This is defined as a settlement that has a more limited supply of social and economic infrastructure, including employment, and where local residents depend upon other centres to meet a broad range of needs with some form of accessibility to those centres. CS Policy WSC6 specifies a scale of development of 100 dwellings for Horam. Within this context, the Rosemead Farm development of 123 dwellings<sup>3</sup> is under construction to the north-west, on the other side of Horebeech Lane.
10. Paragraph 103 of the National Planning Policy Framework (the Framework) seeks to ensure that significant development limits the need to travel, and offers a genuine choice of transport modes, while allowing for variation in sustainable transport solutions between urban and rural areas.
11. Horam has facilities including shops, a village hall and churches located within around 1km of the site. The proposed pedestrian crossing points at the site entrance would facilitate access for future occupiers of the development to these facilities, using the footway along the northern side of Horebeech Lane. This pedestrian route includes the recently constructed pavement across the

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<sup>2</sup> Statement of Common Ground (SoCG) paragraph 6.18.

<sup>3</sup> Planning Application Ref: WD/2016/2071/MAO, granted permission in 2016.

old railway bridge on Horebeech Lane to the west of the site. The proposed link to the Cuckoo Trail would also facilitate use of a scenic, alternative pedestrian and cycle route to Horam. Timetable evidence presented indicates that there is generally regular bus access between Horam and settlements including Eastbourne, Hailsham and Heathfield.

12. A primary school at Maynard's Green and secondary school in Heathfield are within a modest drive from the site. There is also a doctor's surgery and a dental practice in Horam, albeit residents' reports suggest that facilities' existing capacity may be limited.
13. The above together show that some facilities and services are located within the village or a modest journey from it. As such there would be some alternatives to the private motor car, for future occupiers of the proposed development to access facilities and services in Horam and beyond.
14. The main parties consider that the appeal site is sustainably located and complies with Paragraph 103 of the Framework. The Local Highway Authority (LHA) has withdrawn its objection to the proposal, in the light of the Transport Statement Addendum provided by the appellant<sup>4</sup>. A Travel Plan condition is suggested by the Council to achieve accessibility by non-car modes. Nevertheless, there is a volume of resident concern regarding car dependency.
15. The nearest bus stop is approximately 850km distance from the site. During weekday commuting hours before 8am, bus services from Horam to Hailsham and Eastbourne are limited, and Horam does not have a train station. The Cuckoo Trail and part of Horebeech Lane are without street lighting, which limits the attractiveness of these routes to pedestrians and cyclists outside daylight hours. The above together also reduces the likelihood of commuting by bus. Furthermore, in addition to one and two-bedroom dwellings, two thirds of the proposed 58 dwellings would have three or more bedrooms. As such, the proposed development is likely to generate a range of needs for its various residents to travel outside the village to access services and facilities including employment, healthcare and leisure. The above combination of factors is likely to constrain access to facilities by means other than the private car.
16. I therefore conclude that the proposed development would lead to reliance on the private car by future occupiers. As such, the proposal would conflict with Policies SP07 and SP09 of the CS. Together, the policies seek to ensure that, amongst other things, development minimises greenhouse gas emissions, and it is easier to travel by more sustainable modes of transport.

#### *Character and appearance*

17. The site is located in the Low Weald. It is not within an Area of Outstanding Natural Beauty or National Park. However, this does not negate the requirement in Paragraph 127 of the Framework for development to be sympathetic to local character, including its landscape setting.
18. The site is a grassland field, which slopes down from Horebeech Lane towards the Cuckoo Trail in a broadly southerly direction. There is a woodland belt along the railway embankment between the Cuckoo Trail and the site. An established boundary hedge runs along the site's northern Horebeech Lane frontage. The site's eastern boundary comprises an established tree line. The

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<sup>4</sup> Dated 5 December 2019.

boundary hedge to the garden of Old Orchard House runs alongside the appeal site's western boundary.

19. The appeal site forms part of the 'green frame' surrounding the eastern and southern edge of the village of Horam, south of Horebeech Lane. It also provides a 'green break' on the southern side of Horebeech Lane between the eastern end of Horam and the hamlet of Marle Green. As such, the site is within the countryside and contributes to the rural character and identity of the setting of Horam and Marle Green.
20. The appeal site's vegetation and topography are reflected in its SHELAA<sup>5</sup> rating as 'fairly visually contained', with 'moderate landscape capacity' and potential for around 63 dwellings. Albeit, the SHELAA does not allocate the site for development nor assess the appeal proposal.
21. The proposed development would be adjacent to residential properties and near the Rosemead Farm development. As such, the proposal would not constitute isolated development. Nevertheless, paragraph 79 of the Framework does not imply that development has to be 'isolated' in order for restrictive policies to apply, and there may be other circumstances when development in the countryside should be avoided.
22. The Landscape Strategy Plan<sup>6</sup> outlines mitigation for the proposed development, the detail of which could be secured by planning condition. The strategy includes semi-mature trees, shrubs, hedging, ponds and wetland planting, wildflower meadow, a woodland tree and shrub belt along much of the western boundary, and retention and enhancement of the eastern boundary vegetation. Such elements would over time, go some way to soften the landscape and visual impacts of the proposal. Moreover, the envisaged perimeter planting retention and enhancement would filter views of the site from various surrounding viewpoints. Consequently, the verdant character of the Cuckoo Trail 'green corridor' would not be significantly harmed by the development.
23. Nevertheless, the following combination of factors would contribute to a noticeable urbanisation of the 'green break' between Horam and Marle Green: the proposed removal of the site's northern perimeter hedge; the volume of houses; the combined mass of the northernmost row of houses on plots 1 to 5, and 56 to 58, and associated expanses of roadway and parking space towards the front of the site; and the centrality and scale of the proposed access road which would approximately bisect the site, north to south. Moreover, the proposal would, in combination with the nearby Rosemead Farm development cumulatively substantially extend the built-up character of Horam east of the Cuckoo Trail. The above effect of the proposal would be particularly noticeable from the north along Horebeech Road on the approach to the site, and within the site.
24. The proposed development would adjoin residential development to the west. However, the greater density and the clustering round cul de sacs, as proposed, would contrast noticeably with the existing pattern of larger dwellings fronting onto Horebeech Lane, with spacious gardens stretching down to the Cuckoo Trail.

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<sup>5</sup> Wealden Strategic Housing and Economic Land Availability Assessment (SHELAA) (2019).

<sup>6</sup> Illustrated in Drawings Ref: CHA-HOR-LS-001 and CHA-HOR-LS-001.

25. The main parties consider the proposal would not appear intrusive to the countryside, or harm the character and appearance of the village.
26. However, for the reasons described above, I conclude that the proposal would harm the character and identity of the rural setting of Horam and Marle Green. As such, it would conflict with Policies EN27 of the LP1 and SP013 of the CS, which together seek to ensure, amongst other things, that development respects and promotes local distinctiveness.

*Living conditions of neighbouring occupants*

27. The main parties consider that the appeal scheme would not give rise to unacceptably adverse impacts on the living conditions of neighbouring occupiers. However, the proposed layout plan does not show the side extension, and thus the full extent of, neighbouring Old Orchard House, to the west. The western boundary of the appeal site is approximately 0.6m from the windows of the side extension of Old Orchard House. Two of the three sets of ground floor windows in the extension serve habitable rooms, in the form of a kitchen/dining room and a bedroom.
28. The part of the appeal site adjacent to Old Orchard House would comprise front garden space and a double garage for proposed plot 58. The northernmost of the facing neighbouring windows is an obscure glazed bathroom window, and so would not incur harm to outlook. However, given its proximity and oblique orientation, the south-western gable end of the proposed garage block for plot 58 would have an overbearing effect on the outlook from the facing middle ground-floor window of Old Orchard House.
29. The proposed landscape strategy indicates a perimeter woodland tree and shrub belt along the western boundary of Plot 58. This would variously block light and views to windows in the eastern elevation of Old Orchard House. Even if the tree and shrub belt were planted and subsequently removed in this corner, or not planted to avoid light and outlook harm, this would invite pressure for future occupiers of plot 58 to instal side fencing overbearingly close to the eastern elevation of Old Orchard House.
30. Therefore, I am not persuaded that an enduring design and layout solution has been found for the north-western corner of the site, to ensure a reasonable combination of privacy, light and outlook to the side windows of Old Orchard House.
31. To conclude, the proposal would harm the living conditions of neighbouring occupiers of Old Orchard House, in respect of outlook, privacy and light. As such, it would conflict with Policy SP013 of the CS, which seeks to ensure that, amongst other things, development results in high quality living environments and durable places where people will want to live.

*Highway safety*

32. Pedestrian crossing points from the site entrance to the northern footway on Horebeeche Lane are proposed. A pavement has recently been constructed across the nearby bridge over the Cuckoo Trail. Together, these would provide future occupiers of the proposed development with a safe pedestrian route along Horebeeche Lane, which connects with the centre of Horam and the Cuckoo Trail.

33. From what I saw during my site visit, albeit a snapshot in time, Horebeech Lane appears to have a regular flow of traffic in both directions. The proposal for 58 homes, in combination with the bulk of the homes yet to be constructed at Rosemead Farm, will increase traffic in the area.
34. I note residents' concerns about the effect of the proposal, along with other developments further afield, on highway safety. However, the mini-roundabouts and single-lane priority traffic arrangement on the bridge, as exist on Horebeech Lane, are recognised traffic management methods. From what I saw during my site visit, these elements provide some degree of speed calming on the approach to the proposed site access.
35. Furthermore, the LHA has withdrawn its objection to the proposal, in the light of the Transport Statement Addendum<sup>7</sup> provided by the appellant. Planning conditions suggested by the LHA and Council, in the interests of highway safety, include a requirement for a highway scheme to incorporate recommendations from a future road safety audit. This would provide additional flexibility to 'take stock' of and provide for future road safety requirements, including taking account of effects of emerging development in the area.
36. In conclusion, the proposed development would not result in significant highway safety risk. As such, it would not conflict with Policies TR3 and TR13 of the LP1, and Policy SP013 of the CS, insofar as the policies relate to highway safety. This absence of harm is a neutral factor, which does not weigh in favour of the proposal.

## **Other Matters**

37. My attention is drawn to previous appeal decisions which permit housing development on other sites within Wealden District<sup>8</sup>. However, the other schemes differ from the current appeal case in several ways. They comprise substantially fewer dwellings and were outline applications, with various matters including appearance, landscaping, layout and scale reserved for future consideration. In the decisions where the number of years supply of deliverable housing sites is stated, the number of years shortfall is around twice that in the current case. Decisive harm to living conditions of neighbours was not found. The above, together, limits the extent to which the other schemes are analogous to the current appeal proposal. Moreover, full details of the other cases are not before me. The appeal proposal also has its own setting and circumstances. As such, I assess the proposed development on its own merits.
38. Natural England have stated that the housing growth which was proposed in Wealden District within the withdrawn LP2 would not adversely affect the integrity of the Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA), in respect of air quality and recreational pressure<sup>9</sup>. Within this context, the main parties consider that the proposal could be delivered without adverse impact on the integrity of the SAC and SPA. Given the above, and as I am dismissing the appeal on other grounds, I have not undertaken an Appropriate Assessment of the proposal.

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<sup>7</sup> Ref: as per footnote 4.

<sup>8</sup> APP/C1435/W/17/3178137 at Isfield, APP/C1435/W/17/3179061 at Cross in Hand, APP/C1435/W/18/3197286 at Upper Dicker and APP/C1435/W/17/3189368 at Blackboys.

<sup>9</sup> Natural England Regulation 19 consultation response to the Wealden Local Plan Proposed Submission Document, 5 October 2018.

39. Residents suggest other uses for the site, such as greenspace or a school. However, no substantive proposals for such uses are before me. I note residents' concerns about drainage, light pollution and wildlife protection. As I am dismissing the appeal on other grounds, it is not necessary for me to consider these matters further.

*Self-build housing provision*

40. The evidence before me suggests that in May 2020, approximately 84 individuals were on Wealden's Self-Build and Custom Housebuilding Register, of whom around 74 were seeking serviced plots. Within this context, the provision of a Self-Build and Custom-Build Plots Scheme, as set out in the UU, would contribute to meeting demand in the district. In a scheme of 58 dwellings, 5%, for example, would deliver around three self-build plots, which would potentially contribute to meeting the district's demand. However, the number of self-build plots which the proposal would deliver is not stated. Moreover, there is not evidence before me - in the form of a substantive analysis of self-build housing supply in the district, for example - to substantiate that 5% would be the minimum acceptable quantity in this case. As I am dismissing the appeal on other grounds, this does not alter my decision.

**Planning Balance and Conclusion**

41. Paragraph 61 of the Framework does not specify a requirement for Local Plan policy on self-build dwellings. Furthermore, the national Planning Practice Guidance (PPG) sets out that relevant authorities should consider how they can best support self-build and custom housebuilding in their area, which *could* include developing policies in their Local Plan for self-build and custom housebuilding, amongst other things. As such, the above sections of the Framework and PPG do not explicitly demand Local Plan self-build housing policies.

42. However, given the apparent demand in the district, it is questionable, in respect of self-build housing, whether sufficient relevant Local Plan policies are in place to reflect the importance, described in paragraph 59 of the Framework, of delivering a sufficient amount and variety of land where it is needed, and addressing the needs of groups with specific housing requirements.

43. The main parties agree that the Council can demonstrate a supply of deliverable housing sites of around 3.67 years. While the longer term effects of COVID-19 on housing in the district are yet to be manifested, it is not disputed that there is a shortfall in deliverable housing land in the district for around 1,721 dwellings. Accordingly, the evidence before me indicates the Council cannot demonstrate a five year supply of deliverable housing sites.

44. As such, policies which are most important for determining the application are to be considered out of date. The tilted balance, as set out within paragraph 11 of the Framework, therefore applies.

45. The proposed 58 dwellings would contribute to addressing the shortfall in deliverable housing in the district. 21 of the dwellings would provide affordable housing units. An as yet unconfirmed amount of self-build plot provision would be made. The development would bring associated socio-economic benefit during and after construction, including potential additional custom for local

services and facilities in Horam, which could help support their future provision. The above together weighs substantially in favour of the proposal.

46. Nevertheless, I have identified significant harm in relation to suitability of location, the character and appearance of the area, and living conditions of neighbouring occupants.
47. I appreciate that the Framework sets out a presumption in favour of sustainable development but even where the tilted balance is engaged, the benefits of additional housing do not necessarily outweigh all other concerns. Moreover, case law has found that even where policies can be considered out of date, this does not mean they carry no weight. The balancing exercise remains a matter of planning judgement.
48. As such, given the totality of harm identified above, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefit, when assessed against the policies in the Framework taken as a whole. The proposals would fail to comply with the relevant policies of the development plan and national guidance, and therefore the appeal should be dismissed.

*William Cooper*

INSPECTOR