



Appeal Decision

Inquiry held on 10-18 January 2023

Site visit made on 13 January 2023

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2023

Appeal Ref: APP/P1425/W/22/3305946

Land east of Ditchling Road, Wivelsfield, East Sussex, RH17 7RF

- 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 Welbeck Strategic Land IV LLP against the decision of Lewes District Council.
 - The application Ref LW/21/0729, dated 8 September 2021, was refused by notice dated 10 May 2022.
 - The development proposed is the demolition of a redundant barn and associated structures, the erection of up to 96 No. residential dwellings, including 40% affordable housing, allotments, provision of pedestrian and vehicular access, open space, associated infrastructure and, with all matters reserved except access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of a redundant barn and associated structures, the erection of up to 96 No. residential dwellings, including 40% affordable housing, allotments, provision of pedestrian and vehicular access, open space, associated infrastructure and landscaping, with all matters reserved except access at Land east of Ditchling Road, Wivelsfield, RH17 7RF in accordance with the terms of the application, Ref LW/21/0729, dated 8 September 2021, subject to the conditions in the schedule at Annex 1.

Applications for costs

2. An application for costs was made during the Inquiry by Welbeck Strategic Land IV against Lewes District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The proposed development has been submitted in outline with all matters reserved except for access. A number of further parameter plans were also submitted which show the proposed land use, building heights, density and access and movement. These plans are indicative and I have determined these on the same basis.
4. Whilst there is no dispute between the parties regarding the use of the Council's wording in the decision notice, I have utilised the original description as set out on the planning application form.
5. A legal undertaking has been submitted along with this appeal which secures a number of planning obligations and I discuss these later in my decision.

6. During the Inquiry, considerable discussion took place regarding the differences in language used by witnesses to define their respective scales of weight attributable to particular effects and benefits in the planning balance. For the avoidance of doubt, in this decision I shall adopt a scale of 'substantial', 'significant', 'moderate' and 'limited' to define such.
7. Reference was made during the Inquiry by the main parties and other interested parties to the consultation on the Government's proposed changes to the National Planning Policy Framework (the Framework) and the progress of the Government's Levelling Up Bill. The Framework consultation remains ongoing at the time of this decision, and whilst it may suggest a potential direction of travel for a future iteration of the Framework and Government policy, as the outcome of the consultation process is currently unknown and a revised Framework has not yet been published, this can only be given limited weight.
8. The final sitting day of the Inquiry was Friday 13 January. It was agreed by the parties that following an application for costs being made by the appellant on the final sitting day, further time was required by the Council to provide a full response to this application and for the appellant to make any final comments. Further time was also required to allow for the completion of the legal undertaking. These matters were resolved by 18 January and the Inquiry was formally closed in writing on that date.

Main Issues

9. The Council's reasons for refusal covered three separate matters including concerns regarding the adequacy of information to justify the proposed site access and layout which may have resulted in increased hazards to highway users contrary to paragraph 111 of the Framework. Following the updating of transport baseline modelling work and the agreement of a Statement of Common Ground (SoCG) between the main parties and East Sussex County Council, it was agreed that subject to the imposition of suitable conditions, highway matters were no longer in dispute and that the Council would not be seeking to pursue this reason for refusal during the Inquiry and as a result, I do not consider it to be a main issue. Notwithstanding the Council's withdrawal of the highways reason for refusal, concerns relating to highway matters have been raised by third parties prior to and during the Inquiry. As such, I held a round table session to explore these matters further and I address highway issues within the 'other matters' section below.
10. In light of this, I consider the main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the proposal on existing green infrastructure having regard to the existing public right of way.
11. I am also required to consider the benefits that would arise from the proposed development and this forms part of the planning balance as set out below.

Reasons

Character and appearance

12. The appeal site comprises a number of pastoral fields located to the south of an existing residential development known locally as 'Blackmores' at Wivelsfield Green west. The site is bordered by mature hedgerows to the west whilst the southern boundary is bound by hedgerows interspersed with a number of mature trees and vegetation. Within the site are a number of large mature oak trees running broadly north/south through the site along the field boundary.
13. Policy CP10 of the Lewes District Local Plan - Part 1 (Joint Core Strategy) (2016) (LLP1) seeks for the natural environment of the District, including landscape assets, to be conserved and enhanced. Criterion 1(i) of CP10 seeks to maintain and where possible enhance, amongst other things, locally distinctive landscape qualities and characteristics and is informed by reference to two documents, those being the East Sussex County Landscape Assessment (ESCLA) and the Lewes District Landscape Capacity Study (LCS). The appeal site falls within ESCLA Western Low Weald landscape character area and includes a number of features identified in the ESCLA as being key positive attributes, such as the site's largely pastoral landscape along with scattered tree features including mature oak trees and hedgerow trees.
14. The appeal site also falls within character area B02 of the LCS which identifies this area as having low capacity and a moderate character sensitivity to change. The LCS identifies that there is a medium potential for mitigation as the landscape becomes more open further south. The extent of area B02 extends further south than the appeal site, and from my own observations on site, the landscape south of the appeal site becomes more open over the southernmost part of area B02.
15. The LCS identifies management opportunities within area B02 to maintain hedges and the tree-lined stream as a natural defence barrier. Whilst some hedgerow would be lost to the western boundary to provide the site access and within the site around the central north/south landscaping area, the southern boundary tree-lined stream would be maintained. As a result, the proposal would reflect some of the management opportunities recommended in the study.
16. During the Inquiry it was recognised that the LCS is a high-level study and as a result its findings were at times inconsistent. Nonetheless, the LCS is one of the two key documents expressly referenced in Policy CP10 to which regard must be had when considering development proposals. Whilst the appeal proposal's green infrastructure proposals would accord with a number of the LCS management principles, the proposal would nonetheless affect the area's sensitivity to change. Therefore, it would result in conflict with CP10(1)(i).
17. Wivelsfield Green west has a generally linear character, albeit the area around and encompassing the 'Blackmores' development of 16 homes represents an existing area of development at depth. The appeal proposal would significantly extend the amount of development at depth in this part of the village, albeit the linear development along Green Road would be maintained. When experiencing Wivelsfield Green west from Green Road, the appeal proposal's siting would not adversely alter the perception of a linear character to this part of the village due to intermittent views. The presence of additional development at depth would not be harmful as a matter of principle and whilst the overall footprint of the appeal proposal would represent a considerable

increase in the existing footprint of this part of the village, there was no clear evidence presented as to how this would itself be harmful.

18. The parameter plans indicate that the proposed dwellings on the edge of the site could be developed at lower densities than within the centre of the site. When also taking into account the land use plan, the evidence demonstrates that the proposed development could be accommodated in a manner that would provide an acceptable relationship with the existing development in this part of the village. Reference was also made during the Inquiry to the numerical scale of the proposal in comparison to the number of existing properties in Wivelsfield Green west. However, there is no clear evidence that the scale of the proposal would be sufficient to overwhelm the village in terms of dwelling numbers or density. No compelling evidence was provided to quantify the extent of any harm arising from the alleged overwhelming and as a result, I do not find harm arising from overwhelming has been demonstrated. Whilst the appeal proposal is of a more significant scale than the existing development in this part of the village, this does not mean that the proposal could not be accommodated satisfactorily through future reserved matters having regard to the parameter plans provided.
19. The rural character of the site is, in part, informed by the presence of mature trees, including the significant mature oak trees running broadly north/south through the site between fields 2 and 4¹. These trees were described during evidence as being well on their way to becoming veteran trees and they are a key landscape characteristic of the site. The trees along the southern boundary of the site would no longer be appreciated as a field boundary albeit they would nonetheless be retained and would form part of the proposed structural green infrastructure for the site. Whilst there would be views through the southern boundary trees of the proposed development to the north, their scale and maturity would still allow them to be read in the landscape as an existing retained feature rather than as a new landscape buffer. Although the oak trees are identified as key positive feature of the landscape, their presence is not sufficient to justify a higher value or sensitivity being attributed to the landscape overall. The management opportunities for this character area within the LCS already indicated maintaining hedges and tree lined stream as a natural barrier. Therefore the extent of impact of the proposal on the southern boundary trees would be limited.
20. The proposed development would undoubtedly alter the appreciation of the central line of trees from within and beyond the site, although they would still be retained within the central landscaped area of the scheme. The appeal proposal would also change the appreciation of the mature oak trees which would become part of the internal green infrastructure. Due to their scale, they would remain visible from well beyond the immediate landscaping and their crowns, or parts thereof, would still be visible from beyond the site boundary. That being the case, the trees would be close to areas required for drainage and amenity space and would no longer be seen in the context of the historic landscape structure. Instead, they would form part of the open space associated with a residential development. As a result, the scheme would harm the appreciation and setting of the trees, which would be detrimental to the landscape character of the area.

¹ CD6.9 – Appendix 1 to Council's Proof of Evidence – Landscape and Visual effects – Figure 7

21. Notwithstanding the above, the proposed planting within the structural open space would become more established over time and I consider that the effect of the structural planting area would reduce the impact of the development on the character and appearance of the site and surrounding area. I do not consider that the maturing of the planting and the effect over time would have no benefits as suggested by the Council. Instead, it would reduce this effect to a level somewhere between the two parties' positions. However, there would undoubtedly be some residual impact on the trees and this would be sufficient to breach the requirements of Policy CP10 of LLP1 which seeks to maintain and enhance the locally distinct landscape qualities and characteristics.
22. The Council states that the proposed development would also compromise the transition between the more densely developed part of the village to the east and the countryside to the north and south. However, the northernmost edge of the site is bordered by the existing residential development at 'Blackmores' and their associated residential paraphernalia creates an unsympathetic edge to this part of the settlement. In contrast, the appeal proposal's parameter plans, to which a condition could be imposed to require future reserved matters to be in broad accordance with, show how open space and structural landscaping would be provided to the southern and western edges of the site. When combined with the proposed area of built development being set back from these boundaries, the proposal would serve to soften the edge of the new development when viewed from Ditchling Road. This would create a new edge to the settlement, replacing the views of the rear of the Blackmores development.
23. The Council also states that the proposal would harm to the transition between Wivelsfield Green west and the more densely developed part of the village to the east. However, no clear evidence was presented at the Inquiry to substantiate or quantify the scale of any harm to this transition resulting from the appeal proposals. Due to the presence of intervening development and the distance between the appeal site and more densely developed part of the village to the east, I find no demonstrable harm in this regard.
24. My attention has been drawn to a previous appeal in 2016² for a scheme for up to 95 dwellings on a slightly larger site than the appeal proposal in the same location. The Inspector in the 2016 decision considered that the proposal would be visually intrusive to only a limited degree. The 2016 appeal was recovered by the Secretary of State who considered the sustainable development implications of the proposal. The Secretary of State concluded at paragraph 14³ of their decision that the site performs relatively well in environmental terms and within a constrained district. However, landscape matters were not raised as a reason for refusal in the previous scheme, the issue was not contested and no expert landscape evidence was provided at the Inquiry. Whilst I am mindful of the principles of consistency in decision-making, I must consider all of the evidence that is before me including landscape matters and reach conclusions upon them, which I have done, finding some harm to landscape character.
25. I therefore conclude that due to the residual impact on the trees within the site and the hedgerow that would be lost due to the site access, the proposal would be harmful to the landscape character and appearance of the area and would

² APP/P1425/W/16/3145053

³ CD2.6 – Secretary of State Decision (APP/P1425/W/16/3145053) – Land east of Ditchling Road, Wivelsfield, East Sussex

fail to conserve and enhance its natural, locally distinctive landscape qualities and characteristics. Although the scale of harm arising would only be moderate, it nonetheless conflicts with Policy CP10(i) of LLP1 which states that the natural environment of the district, including landscape assets, will be conserved and enhanced by maintaining and where possible enhancing the natural, locally distinctive and heritage landscape qualities and characteristics, including hedgerows, ancient woodland and shaws, as informed by the LCS. The proposal would also conflict with Policies 5 and 6 of the Wivelsfield Neighbourhood Plan (2016) (WNP) which seek to support development where their landscape design reflect distinctive local landscape features including trees, hedgerows and boundary ditches, integrate with their surroundings, and support proposals which enable the protection and enhancement of the parish landscape.

26. There would also be conflict with Criteria 2 and 7 of the draft Interim Policy Statement for Housing Delivery (2020) (the IPS) and paragraphs 130 and 174 of the Framework which are concerned with ensuring, amongst other things, that developments are sympathetic to local character, recognise the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services and reflect other benefits including trees and woodland.
27. The Council also considers that the proposed development would contravene policy DM27 of the Lewes District Local Plan Site Allocations and Development Management Policies Part 2 (2020) (LLP2). However, whilst the supporting text of the policy reflects the importance of trees and green spaces in delivering high quality places, the function of policy DM27 is to set out the requirements that landscaping schemes within development proposals must adhere to. The proposed development's land use plan shows that the areas containing mature trees and vegetation within the site would be maintained, that the scheme would provide flood mitigation through appropriate drainage systems and would retain the existing footpath link through the site. The land use and parameter plans, whilst indicative, would be subject to a planning condition which would require the future reserved matters to be in broad accordance. Therefore any future landscaping schemes would be expected to retain such features. As a result, I consider that the proposal would satisfy the requirements of policy DM27.

Green Infrastructure

28. The appeal site includes parts of two Public Rights of Way (PRoW) which are identified as footpath 10/2 which runs broadly east/west through the site and footpath 22/2 which runs partially along the eastern boundary. The proposed development would fundamentally alter the appreciation of footpath 10/2 by its users as it would change from a pastoral setting to a footpath through a residential development. Footpath 22/2 would become enclosed by residential development along its western edge, albeit it would remain separated from development to its east due to the intervening field.
29. The footpaths provide a green link between the village and the surrounding countryside and whilst the footpaths would remain useable, they would no longer be recognisable as rural green links. The footpaths would fundamentally change in character and users would experience a high level of visual change to their setting and rural context. The parties agree that the extent of visual

change would be at a level of 'major adverse' at year 1 of the proposed development. Whilst future users may become more accustomed to using the footpath through the residential development over time, the proposed structural green infrastructure within the site would not be able to adequately replace what is currently an open pastoral setting. I consider the extent of this visual change would have a significant long term adverse effect and accordingly, would have a detrimental impact on users' visual experience of the routes.

30. At the time of my site visit, which was held during a winter month, I was able to observe desire lines following the alignment of footpath 10/2 across the site although these were barely evident on the ground. The appellants have undertaken a usage survey to establish use of the footpaths affected by the proposal. The survey was conducted during August which is not considered a 'neutral' month for the purposes of surveying and I note this also partly coincided with a national heatwave which may have affected its findings. The presence of stiles and gates across the access points to the site to manage livestock result in the footpaths across the site requiring a significant level of personal mobility and commitment in order to be utilised.
31. Although the appellant's study has limitations, it nonetheless remains the only primary evidence before me as to the usage of the footpaths. Whilst there is no evidence as to what a 'good' level of usage for a footpath in a settlement of the size of Wivelsfield Green would look like, I have no doubt the footpaths are used by walkers. However, when considering the survey along with my own observations, I consider that the footpath is likely to be less heavily utilised than the Council identifies.
32. The Council indicated that the presence of the recently refurbished footbridge to the south-eastern corner of the site is also indicative of footpaths being well-used. However, there is no evidence to support this view and the footbridge could have been refurbished for a myriad of reasons.
33. On balance therefore, the appeal proposal would result in the views from the footpaths experienced by walkers being significantly altered, although the routes would still remain a functional part of the dense network of local footpaths in and around the village. The proposed surfaced footpath following the alignment of the primary access road would enable greater use by existing and future residents who may be less mobile or have younger children or children in prams or pushchairs than would currently be possible. This would therefore provide a limited benefit of the proposal.
34. Policy DM14 of the LLP2 seeks to secure the provision of additional green infrastructure within development proposals and that these are required to have been fully considered where justified by the character and appearance of the area. The policy goes on to require green infrastructure provided as part of new development to incorporate existing features of nature conservation within the site and amongst other things, that ecological corridors should form an essential component of green infrastructure provision. The policy does not refer to any visual impacts of green infrastructure and whilst I have identified an adverse visual impact on the pastoral setting of the footpath, as the proposed development seeks to incorporate the footpath network within its internal structural green infrastructure, I consider that there would be no breach of Policy DM14.

35. Similarly, Policy 6 of the WNP seeks to ensure that proposals protect local assets as well as enabling the protection and enhancement of key features of the Parish landscape. The proposed development would clearly alter the visual appreciation of the footpaths albeit they would retain a functional role through the development as walkable routes. The proposal would maintain the use of a footpath and may enhance access where these cross through the site.
36. In light of the above, I conclude that the proposal would not result in a harmful effect on existing green infrastructure having regard to the existing public right of way network. It therefore accords with the requirements of Policy 6 of the WNP which seeks for development to ensure the protection of local assets and paragraph 5.32 of the supporting text of Policy 6 which seeks to encourage landowners to maintain public footpaths and encourage people to use them.
37. The provision of enhanced access through the development would also accord with paragraph 100 of the Framework as it would continue to maintain the presence of the existing public rights of way and access through the site, but also provide an opportunity to provide a better facility for walkers for the reasons set out above. In light of the retention of the footpaths functional role and the limited benefit of increasing its accessibility for users with a range of levels of mobility, the proposal would accord with paragraphs 92c) of the Framework which seeks to enable and support healthy lifestyles through the provision of safe and accessible green infrastructure.

Other Matters

Highways

38. Concerns were raised by interested parties and the local Member of Parliament that the proposed development would give rise to unacceptable impacts on the local highway network, including in relation to the effect on the mini-roundabout at Ditchling Road/ Green Road and from a lack of public transport in the village. Although highway matters were no longer in dispute between the parties following the preparation of updated baseline survey information a round table session was held to discuss these issues.
39. The appellant's updated highway information demonstrates that the mini-roundabout would not be operating beyond its practical capacity during peak times. Whilst the appeal proposal would result in additional vehicles queuing, this would only result in a limited addition to existing queues and would not be at a level which would result in an unacceptable impact on the roundabout or any residual cumulative impact being severe.
40. The proposal would also provide a priority junction to enable a right-turn into the site from Ditchling Road from the south, along with the securing of a travel plan. Furthermore, enhancements to weekend bus services would be secured as part of the legal undertaking. As such, the residual cumulative impact of the proposal would not be severe which paragraph 111 of the Framework seeks to avoid. The proposed development would therefore be acceptable in highway terms.

Spatial Strategy and Previous Appeal Decision

41. The appeal site is located outside the settlement boundary for Wivelsfield Green. Policy SP1 of the LLP1 sets out the overall requirement for new housing in the District which is expressed as a minimum. Policy SP2 of the LLP1 sets

out the distribution for the additional dwellings proposed in SP1 and identifies Wivelsfield Green for a further 123 homes through a combination of completions, commitments and allocations in the period to 2030. Whilst these policies have not been referenced in the Council's Reasons for Refusal of the proposed development, they are nonetheless relevant policies within the Development Plan that must be considered. However, as Policy SP2 expresses housing requirements as a minimum, I find no conflict in this regard.

42. Policy 1 of the WNP also relates to the spatial approach to development in the parish rather than landscape matters. The parties agree that the proposal would not accord with policy 1 of the WNP, due to its location outside the settlement boundary. Concerns were also raised by interested parties that the appeal proposal would conflict with Policy 2 of the WNP. However, as Policy 2 only confines itself to supporting the proposed allocations to be made by the WNP of which the appeal site is not included, I consider it would not be one of the most important policies in the determination of this appeal. In light of the agreed land supply position I address the weight to be afforded to this context below.
43. The Council's reason for refusal against the draft Interim Policy Statement for Housing Delivery (2020) (IPS) relies on contravention of criteria which refer back to other adopted policies within the Development Plan to guide residential developments in the District. However, as the criteria within the IPS which the Council considers to be infringed (criteria 2 and 7) rely upon policies that, amongst other things, deal with the distribution of housing and planning boundaries, these would be deemed to be out of date due to the agreed land supply position.
44. I note that a previous scheme on the appeal site was dismissed by the Secretary of State on the grounds of conflict with the spatial strategy in 2017, although this was at a time when the Council was able to identify more than the 5 years housing land supply that the Framework requires. The land supply position has changed since the previous appeal and it is common ground in this appeal that the Council cannot currently identify a 5 year supply of housing land. This is a material change in circumstances.

Other Material Planning Considerations

45. Concerns have been raised by interested parties that the proposal would place additional pressure on existing public services including schools, doctors and dentists. The provision of additional school places would be addressed through a financial contribution within the legal undertaking and whilst I note that correspondence from the local primary school indicated it was operating at capacity, there have been no concerns raised by the local education authority that additional places could not be provided.
46. My attention has also been drawn to a number of other appeal decisions which relate to the relative weight Inspectors' have afforded to the provision of affordable housing and I have had regard to these in reaching my decision.
47. Concerns were also raised by interested parties that the proposal was for a speculative development without a named developer which, if allowed, would be sold on. However, the nature of the appellant's business model is not a planning matter and I have therefore not considered this issue further in my decision.

Planning balance

48. There is common ground between the parties that the Council cannot currently demonstrate a 5 year housing land supply, and that the current position is that only 2.73 years' worth of land supply can be demonstrated. Where a local planning authority cannot demonstrate a five year supply of deliverable housing sites, the policies which are most important for determining the application are deemed out of date for the purposes of paragraph 11 of the Framework. The presumption in favour of sustainable development therefore applies. For decision-taking, this means granting planning permission unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or, 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.

Benefits

49. The appeal proposal would provide a substantial contribution to the Council's current land supply shortfall. The proposal would also deliver 38 affordable homes, including First Homes in an area where there is an acute need for affordable housing. The Council confirmed it does not have an accurate figure for the current level of affordable housing need albeit a figure of 389 affordable dwellings required over a 5 year period was identified in the Council's Affordable Housing Needs Assessment (2014). When considered against the delivery of affordable housing between 2014 and 2018, the appellant identifies a shortfall of 1,742 affordable dwellings to which the Council has not disputed. Having regard to the Council's recent track-record of affordable housing delivery, the appeal scheme would provide a significant proportion of the average annual additions to affordable housing stock between 2010/11 and 2021/22⁴ which according to the appellant's calculations, and not disputed by the Council, averages 53 dwellings per annum.
50. Furthermore, the Council indicated that the emerging Local Plan has only reached the first stage of consultation⁵ and that an updated Core Strategy which would provide updated housing numbers and sites around 2 years away. I therefore afford substantial weight to the provision of both market and affordable housing that the scheme would deliver in this context.
51. Economic benefits would arise through the construction of the appeal development and within the materials supply chain, albeit these benefits would be time-limited during the construction period. There would also be further economic benefit arising due to future residents spending in local shops and facilities. Due to the scale of development involved, I consider the economic benefits to attract moderate weight.
52. The proposal would provide 16.39% biodiversity net gain which is in excess of the Government's expectations for an increase of 10% biodiversity net gain in new developments. Whilst this is in excess of the Government's requirements, it is not significantly in excess and as a result, I afford this benefit limited weight.

⁴ CD6.6 – Affordable housing Proof of Evidence (appellant) – Figure 6.1, page 34.

⁵ CD3.6 – Lewes District Local Plan - Issues and Options consultation (2021).

53. The proposal would also provide transport mitigation including through enhancements to weekend bus services. Whilst these enhancements are principally to mitigate the effects of the appeal proposal, existing residents would be able to utilise additional weekend services. As such, this would provide a further limited benefit of the scheme.

Adverse effects of the proposed development

54. As I have identified within the main issues, I find that the proposal would result in harm to the character and appearance of the area.
55. Further adverse effects would arise as a result of the conflict with the spatial strategy including the made Neighbourhood Plan for the area.

Conclusion

56. The proposal would conflict with Policy CP10 of the LLP1 and Policies 5 and 6 of the WNP. There would also be some conflict with paragraphs 130 and 174 of the Framework in relation to local character and landscape setting. However, the parties agree that the appeal site does not fall within a valued landscape nor is it covered by any statutory or local designation relating to its landscape quality. When taking into account the findings of the LCS which identifies the area as having moderate capacity for change, and the mitigation that could be provided by new structural planting, the extent of any landscape harm would be moderate.
57. The proposal would also conflict with Policy SP1 of the LLP1 and Policy 1 of the WNP by reason of its location beyond the settlement boundary. However, in the context of an agreed land supply position of only 2.73 years, and with the emerging Local Plan some years away from adoption, the conflict with the spatial strategy only carries limited weight in this instance. It also represents a significant change in circumstances since the last appeal was dismissed in 2017.
58. In reaching my conclusion I have had regard to paragraph 14 of the Framework and taken into account the main parties' written submissions on this part of national planning policy. It states that in situations where the presumption in favour of sustainable development applies, the adverse impacts of allowing development that conflicts with a Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits. However, this only applies where all four of limbs of paragraph 14 are satisfied. In this case, because the local planning authority has less than a 3 year supply of deliverable housing sites, it is common ground that paragraph 14 is not engaged in this case.
59. Notwithstanding that the proposal would accord with Policy SP2 of LLP1 and policies DM14 and DM27 of LLP2, in light of the conflict with policies relating to landscape and the spatial strategy, when considered overall, I find that the proposal would not accord with the Development Plan as a whole. However, the extent of the conflict would be moderate and the conflict with the Framework would be limited. The proposal would also conflict with the IPS albeit having regard to the policies for the supply of housing referred to in the IPS, when considered in combination with the absence of any formal consultation on its content, I afford the conflict with the IPS limited weight.

60. On the other hand the appeal scheme would have substantial benefits in relation to the provision of market and affordable housing, moderate economic benefits and limited environmental benefits. In the context of the land supply position being only 2.72 years and with no realistic prospect of a new Local Plan which would address this shortfall being adopted in the near future, these benefits collectively carry substantial weight. As such, the adverse impacts arising from the harms to the character and appearance of the area and conflict with policies for the supply of housing and landscape are not in my view sufficient to significantly and demonstrably outweigh the benefits of the scheme.
61. I therefore conclude overall that the other material considerations arising from the substantial benefits justify a decision not in accordance with the Development Plan in this case.

Legal Undertaking

62. The appeal is accompanied by a legal undertaking that would secure 38 units of affordable housing plus a commuted sum payment for the balance of affordable housing to maintain policy compliance. Further contributions would be made to secure education contributions, public transport enhancements, a travel plan, school transport provision, a car club, maintenance of play area, maintenance of other open space and recycling facilities.
63. Concerns were raised during the inquiry from interested parties that locating affordable housing of the scale proposed by the development would be inappropriate in the village due to the fact that access to services by future occupiers would require the use of private transport. There are bus services available to higher order settlements with a wider range of facilities and the undertaking would provide enhancements to bus services at weekends. The Statement of Common Ground relating to housing⁶ did not indicate that the Council had any objections to affordable housing being provided in the village to meet identified needs. Furthermore, the provision of First Homes as part of the proposed affordable housing mix would make a contribution to meeting the Government's objectives for this form of housing. I therefore find that the proposed affordable housing provision as set out in the legal undertaking to be acceptable and indeed, necessary.
64. Having regard to the evidence before me, including the Council's Community Infrastructure Levy (CIL) compliance statement, I am satisfied that the submitted legal undertakings are necessary to make the development acceptable, are directly related to the proposal and fairly and reasonably related in scale and kind to the development. As such, they would accord with the requirements of paragraph 57 of the Framework and Regulation 122 of the CIL Regulations (2010).

Conditions

65. I have considered the conditions included in the schedule⁷ which were discussed and updated following a round table session during the Inquiry against the tests set out at paragraph 56 of the Framework, only including those which meet those tests subject to any minor amendments for clarity, consistency and enforceability. There are a number of pre-commencement

⁶ CD6.12 – Statement of Common Ground (Affordable Housing)

⁷ CD6.17 – Planning Conditions (amended version)

conditions necessary which the appellant has agreed to in writing as required by the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

66. In addition to the standard requirements for the identification of the approved plans, and the timing of commencement of development, a condition requiring the submission of Reserved Matters and their subsequent broad accordance with the parameter plans which include a land use plan, building heights plan, density plan and access and movement plan is necessary in order to provide an acceptable form of development.
67. A condition which seeks to control external lighting is necessary in the interests of the protection of the character of the countryside and to prevent disturbance to nocturnal species.
68. Conditions 5 and 6 for the provision of a tree survey and the protection of trees on site are necessary in the interests of protecting landscape character.
69. Condition 7 which is a pre-commencement condition, is required in order to secure a construction management plan is necessary in the interests of safeguarding the environment and the living conditions of nearby and future residents.
70. Conditions 8, 9 and 10 are necessary in the interests of securing suitable drainage measures and their subsequent completion and maintenance. It is necessary for condition 8 to be pre-commencement as this secures the strategy for the wider site.
71. Condition 11 is necessary in the interests of ensuring a satisfactory development and landscape character.
72. Conditions 12 and 13 are required for a Landscape and Ecological Management Plan (LEMP) in the interests of securing biodiversity net gain and securing an ecological design strategy. These are both required to be pre-commencement conditions to ensure they would be effective from the earliest opportunity.
73. Conditions 14, 15 and 16 are necessary in the interests of ensuring any risks to the health and or safety of future users of the site are minimised through any identified or potential site contamination.
74. Condition 17 is necessary in the interests of archaeology.
75. Condition 19 is necessary in the interests of securing renewable, low carbon, energy saving and water saving measures.
76. In the interests of highway safety, conditions 19, 20 and 21 are necessary to secure suitable visibility splays, access gradients are appropriate and to ensure that the detailed drawings of the proposed roads, surface water, outfall disposal and street lighting associated with highway matters are acceptable.

Conclusion

77. In light of the above, I conclude that the appeal should be allowed.

Philip Mileham

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Turney, Counsel for the appellant, who called:

Stephen Kirkpatrick BSc BLD CMLI Architecture	Director, Scarp Landscape
Philip Allin BA (Hons) DipTP MRTPI	Director, Boyer Planning
Annie Gingell BSc (Hons) MSc MRTPI	Tetlow King Planning
Stuart Atkinson	Stuart Michael Associates

FOR THE COUNCIL:

Ruchi Parekh, Counsel for the Local Planning Authority, who called:

Michelle Bolger FLI, Dip. LA, BA, PGCE, BA Landscape Consultancy.	Director, Michelle Bolger Expert
Martin Carpenter BA (Hons) MRTPI	Director, Enplan
Teresa Ford	Senior Transport Planner, East
Sussex County Council	
Roger New	GTA Civils (on behalf of East
Sussex County Council)	

INTERESTED PARTIES:

Maria Caulfield MP	Member of Parliament, Lewes
Nancy Bikson	Lewes District Council, Ward Member, Wivelsfield Ward
Ian Dawson	Chair, Wivelsfield Parish Council
Mark Orchin	Resident
Chris Broad	Resident
Dr John Kay	CPRE Sussex

DOCUMENTS

Received during or after the Inquiry:

1. Extract from Lewes District Council Strategic Housing and Economic Land Availability Assessment (SHELAA) – CD6.14
2. Extract from Lewes District Council Interim Land Availability Assessment (LAA) – CD6.15
3. Opening submissions on behalf of the appellant
4. Opening submissions on behalf of the Council
5. Statement by Ms Maria Caulfield MP
6. Statement by Councillor Nancy Bikson
7. Statement by Mr Chris Broad
8. Statement by Mr Mark Orchin
9. Statement by Councillor Ian Dawson
10. Schedule of planning conditions (Amended)
11. Costs application submitted by the appellant
12. Response to costs application by the Council
13. Final comments on the costs application by the appellant

- 14. Closing submissions on behalf of the Council
- 15. Closing submissions on behalf of the appellant
- 16. Completed copy of the legal undertaking

Annex 1

Schedule of Conditions

1. Approved Plans This decision relates solely to the following plan(s):

- 2847 A 1001 PR Rev D - Site Location Plan
- 6443.002A – Proposed Development Access

2. Time Limit The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the Reserved Matters, as defined in condition 3; to be approved, whichever is the later.

3. Reserved Matters No development shall commence until details of the:

- a) Layout (including site levels);
- b) scale;
- c) appearance and
- d) landscaping.

(hereinafter called "the Reserved Matters") have been submitted to and approved in writing by the LPA. Application for the approval of the Reserved Matters shall be made within three years of the date of this permission. The development shall accord with the approved details. Submission of the reserved matters shall be in general conformity with the principles set out in the following parameter plans:

- i. Land Use Plan No. 2847-A-1200-PR-A
- ii. Building Heights Plan No. 2847-A-1203-PR-A
- iii. Density Plan No. 2847-A-1201-PR-A
- iv. Access and Movement Plan No. 2847-A-1202-PR-A

4. External Lighting No external lighting or floodlighting shall be installed on the buildings, or the road and parking areas hereby permitted without the prior written approval of the local planning authority and/or in accordance with an external lighting strategy to be submitted to and approved by the Local Planning Authority.

5. Tree Survey No development shall commence until an arboriculture survey and impact assessment has been submitted to and approved in writing by the Local Planning Authority. The scheme as submitted shall be in accordance with British Standard 5837 (2005).

Any mitigations proposed and agreed in writing will be implemented prior to any development on site and shall be retained until the completion of the development.

6. Tree Protection No development shall commence, including any works of demolition or site clearance, until details of the protection of the trees to be retained has been submitted to and approved in writing by the LPA. The measures of protection should be in accordance with BS5837:2012 and shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the Root Protection zones.

7. Construction Management Plan No development shall commence, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the LPA. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters:

- Compliance with Air Quality Management guidance documents and BS 5228 Parts 1 & 2;
- the anticipated number, frequency and types of vehicles used during construction;
- the method of access, egress, routing and parking of vehicles during construction;
- hours of constructions activities;
- the loading, unloading and storage of plant, materials and waste;
- detail measures to manage flood risk during construction (both on and off the site);
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
- mitigation of noise, vibration and dust impacts arising out of the construction;
- include details of the use of security hoarding, protective fences, exclusion barriers and warning signs to all appropriate areas including ecological areas;
- provide details of the location and appearance of the site offices and storage area for materials, including a bunded area with solid base for the storage of liquids, oils and fuel;
- risk assessment of construction activities potentially damaging to ecology and biodiversity;
- identification of "biodiversity protection zones";
- practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
- the location and timing of sensitive works to avoid harm to biodiversity features and times when specialist ecologists need to be present on site to oversee works;
- responsible persons and lines of communication;
- the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- A pre-commencement condition survey of the immediate surrounding highway network (to be agreed with the Local Planning Authority).

8. Drainage Prior to the commencement of any development, a detailed drainage strategy shall be submitted to and approved by the local planning authority in conjunction with the Lead Local Flood Authority and the County Ecologist.

- The principles set out in the outline surface water drainage strategy (at section 7 of the submitted Flood Risk Assessment and Drainage Strategy, and associated Appendices H (Calculations), I (Drainage) and J (Maintenance and Management Strategy) prepared by Stuart Michael Associates and dated 21 September 2021) should be carried forward to detailed design. Surface water discharge rates should not exceed greenfield runoff rates for all rainfall

events, including those with 1 in 100 (+40% for climate change) annual probability of occurrence. Evidence of this (in the form of hydraulic calculations) should be submitted with the detailed drainage drawings. The hydraulic calculations should take into account the connectivity of the different surface water drainage features.

- The details of the outfall of the proposed attenuation pond and how it connects into the watercourse should be provided as part of the detailed design. This should include cross sections and invert levels.
- The condition of the ordinary watercourse which will take surface water runoff from the development should be investigated before discharge of surface water runoff from the development is made. Any required improvements to the condition of the watercourse should be carried out prior to construction of the outfall.
- Information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely.
- The detailed design of the attenuation pond should 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 ponds and the highest recorded groundwater level. If this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the drainage system should be provided.

The development shall thereafter be carried out in accordance with the approved details and remain in adherence to them throughout its lifetime.

9. Drainage Maintenance Prior to the first occupation of any individual dwelling, a maintenance and management plan for the entire drainage system should be submitted to the planning authority to ensure the designed system takes into account design standards of those responsible for maintenance. The management plan should cover the following:

- This plan should clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains, and the appropriate authority should be satisfied with the submitted details.
- Evidence that these responsibility arrangements will remain in place throughout the lifetime of the development should be provided to the Local Planning Authority.

10. Drainage Completion Prior to the first occupation of any individual dwelling within the development, evidence (including photographs) should be submitted showing that the drainage system to serve that dwelling has been constructed as per the final agreed detailed drainage designs.

11. Details of grading of land No development shall commence, including any works of demolition, until details of earthworks have been submitted to and approved in writing by the LPA. These details shall include the proposed grading of land area including the levels and contours to be formed and showing the relationship to existing vegetation and neighbouring development. Development shall be carried out in accordance with the approved details.

12. LEMP A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the Local Planning Authority prior to the

commencement of the development. The content of the LEMP shall include the following:

- a) description and evaluation of features to be managed;
- b) ecological trends and constraints on site that might influence management;
- c) aims and objectives of management;
- d) appropriate management options for achieving aims and objectives;
- e) prescriptions for management actions, together with a plan of management compartments;
- f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period;
- g) details of the body or organisation responsible for implementation of the plan;
- h) ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

13. Ecological Design Strategy No development shall take place until an ecological design strategy (EDS) addressing enhancement of the site to provide a minimum 10% biodiversity net gain has been submitted to and approved in writing by the local planning authority. The EDS shall include the following:

- a) purpose and conservation objectives for the proposed works;
- b) review of site potential and constraints;
- c) detailed design(s) and/or working method(s) to achieve stated objectives;
- d) extent and location /area of proposed works on appropriate scale maps and plans;
- e) type and source of materials to be used where appropriate, e.g. native species of local provenance;
- f) timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- g) persons responsible for implementing the works;
- h) details of initial aftercare and long-term maintenance;
- i) details for monitoring and remedial measures;
- j) details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

14. Contamination Report No development shall take place, including any demolition, ground works, site clearance, until (or such other date or stage in development as may be agreed in writing with the LPA), the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved, in writing, by the LPA:

- (a) A preliminary risk assessment which has identified:

- i) all previous uses;
- ii) potential contaminants associated with those uses;
- iii) a conceptual model of the site indicating contaminants, pathways and receptors; and
- iv) potentially unacceptable risks arising from contamination at the site.

(b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

(c) the site investigation results and the detailed risk assessment (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

(d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the LPA. The scheme shall be implemented as approved.

15. Contamination Remediation Report Prior to occupation of the development hereby approved, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the LPA. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the LPA.

16. Potential Contamination If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the LPA for, a remediation strategy detailing how this unsuspected contamination shall be dealt with.

17. Archaeological Findings Report The development hereby permitted shall not be brought into use until an archaeological site investigation and post - investigation assessment (including provision for analysis, publication and dissemination of results and archive deposition) has been completed and approved in writing by the LPA.

18. Sustainability No development above ground floor slab level of any part of the development hereby permitted shall commence until a report has been submitted to, and approved in writing by, the Local Planning Authority, to include full details of all renewable/carbon saving/energy (including vehicle charging points) and water efficiency measures to limit consumption to 110 litres per person per day to be incorporated into the scheme. All measures approved shall thereafter

be provided prior to the occupation of any individual dwelling and maintained in place thereafter throughout the lifetime of the development.

19. Highways: Visibility Splays No part of the development shall be first occupied until visibility splays of 2.4 metres by 60 metres to the north and 101 metres to the south have been provided/maintained at the junction of the access with Ditchling Road in accordance with the approved plans. These visibility splays shall thereafter be kept free of all obstructions over a height of 600mm.

20. Access Gradients The completed access shall have maximum gradients of 2.5% (1 in 40) from the channel line and 11% (1 in 9) thereafter.

21. Highways Detailed Drawings Prior to the commencement of development on site, detailed drawings, including levels, sections, and constructional details of the proposed road[s], surface water drainage, outfall disposal and street lighting to be provided, shall be submitted to the Planning Authority and be subject to its approval, in consultation with the Highway Authority.

22. Building Height Limit: No buildings or structures within the development shall exceed 9m high from the level of the surface of the ground immediately adjacent to the building.