

26 August 2020



Via Teams Meeting

MINUTES

1	Apologies and Minutes of Last Meeting	
2	Matters Raised by Panel Members <p>Q. Update on Wealden Plan?</p> <p>A. We are still in the early stages, the call for sites has closed and the list is being collated. Many are reruns of previous sites but there are some new sites which is positive. Our intention is for officers to get together and go through the sites. These will be reported to Wealden members and go to consultation with the town and parish councils. The local plan sub-committee has agreed the production of the plan timetable. The SCI sets out how we will engage with everyone and the development of the local plan. We are adjusting how we communicate with residents regarding applications. The commitment in the updated SCI is to move exclusively to only producing site notices and this has been trialled for a while. We are yet to implement fully but this is likely to start next month.</p> <p>Q. Enforcement issues around rubbish and household waste viz dumping of waste on sites in Chalvington and Ripe?</p> <p>A. This sits under the Street Scene team and is not a planning enforcement issue unless it is building materials from a site being dumped. If it is a specific location it should be resolved through the Street Scene team. They have been successful in fly tipping prosecutions.</p> <p>Q. Method of calculating housing targets for Wealden DC? The targets seem to be based on the gap between the house prices and average salaries. Many residents work in London on higher salaries than Wealden employees and gives a false impression of the area housing need?</p> <p>A. The calculation parameters are set by Government. Some councils have challenged Government but rarely win. The ratio is median so it is unlikely to be skewed to any extent. The Government is proposing many changes in their White Paper, including the 5 year land supply, but the calculation is being proposed to drop certain factors including duty to cooperate, which is contentious. It is likely that the policy will change yet again. For some of our neighbours the numbers have increased significantly, the exception being Eastbourne where the number has dropped. Our figure will reduce very slightly. We have been talking to you for some time around the requirement for a higher figure. It is wait and see on the White Paper consultation and we understand that the Government will push forward on changes quickly.</p>	

- Q. Stacey Robins to meet with parish, when and how?
- A. We are still committed to talking to all the town and parish councils about the next iteration of the local plan. We had previously done work round this but were overtaken by Covid. The conversations will still go ahead, probably via Teams, but if there is a change then some of these could be hybrid meetings of both physical and virtual.
- Q. With regard to displaying of site notices, where you have a large site how will you ensure it is displayed and visible?
- A. All we can say is that it is part of our procedure and we are committed to displaying more. It will be proportionate to the scale of the site and if there are several frontages there will be multiple notices. If we are alerted to a notice being in the wrong place, removed or blown away we will replace them.
- Q. People expect to be written to and don't engage electronically. You may need to be more proactive in this area. We have a parish newsletter every six months and can pass the message on via that channel. Who displays the notices?
- A. Wealden puts the notices up. We are aware of issues with a few sites. One of the changes due to Covid was moving to 100% publication on social media and one of the ideas from Government was to use just the website for consultations. The public was encouraged to participate in a trial for this and we encourage residents to sign up for MyAlerts. We can only do what we can with the powers available.
- Q. You need to make the website more user friendly – the main Wealden one?
- A. Planning have undertaken a lot of work on their part of the website and welcome feedback. We have updated several pages linked to Covid. We are planning more work on the website.
- Q. In an instance where a planning application for a new development within the A.O.N.B and/or the Zone of Influence of the Ashdown Forest, SSSI's, National Parks is submitted. Should clearance of the site be undertaken in advance without permission being granted, would Wealden District Council support a request to MP's regarding the following: Given that these are sensitive area's permission be automatically refused and no application considered until the site has been reinstated to its previous condition at the expense of the landowner. Something like this would be a useful tool for enforcement?
- A. Our powers start when action on site amount to development triggering requirement for permission and involvement. Pre-development tree felling might be a conflict with other legislation but for planning there is nothing we can do. We encourage developers not to clear sites but some less scrupulous developers go ahead. We are not able to reject applications from developers who have "jumped the gun". Moreover we cannot refuse to consider submission due to pre-submission works.
- Q. Some council members believed that trees without TPOs were protected, i.e. large oaks?
- A. There may be confusion with felling licences which are irrespective of planning applications. Unless they are protected by some order then no consent is required even for ancient woodland. Our enforcement officers have being

going out in emergencies and serving TPOs. We do understand there are unscrupulous operators, but not many, and when we come across them we move as fast as we can. The key point is whether that action could weigh against them, we don't have that power it would need a change in primary legislation.

Q. Would Wealden support a change in primary legislation?

A. The White Paper proposes changes to policy and decision making practices. We are formulating a response as a District Council. There was some suggestion of a county wide response. We are planning to air this at CAG on 15 September.

Q. Can Wealden District Council provide a definitive answer to what opportunity there is to vary the planning application fees and CIL payments? For example, higher fees and CIL payments for unsustainable developments and housing sizes that are not needed in Wealden, and lower fees and charges for environmentally and socially acceptable developments?

A. The CIL is currently set and collected by Wealden. The White paper proposes a nationally set levy together with changing it to an occupational payment. This is controversial and many Councils are upset at the potential change. For planning fees, these are nationally set. Government has variously suggested locally set application fees, but has not implemented this. It would be useful for parish/towns to respond to the White Paper regarding this.

There is often a disconnect between developers making applications against what residents are prepared to tolerate in parishes. It is not possible to demand a higher fee for developments proposed that local residents consider too large or not reflective of local need. It might be possible to air this in the White Paper responses – that developments submitted on land outside an adopted strategy, should command a higher fee.

Q. Would WDC support the call by residents that the Broad Oak Primary School Playing Field become Green Open Space, in a recent poll of residents 270 were in favour and 10 against?

A. The mechanism to do this would be through a neighbourhood plan rather than through specific policy or spate action.

Q. What about AONB protection around Heathfield? Some concerns due to recent application at Crowborough.

A. The Eridge Road application has gone through and the decision did not ignore the policy tests relating to the AONB. The outcome was balanced in favour of approval which was in the public interest. The report is available on the website. The suggestion that the AONB was ignored is incorrect. It does not set an immediate precedent for growth in the AONB. We have a live undetermined application for c.100 houses at Ghyll Road and a couple of applications for smaller growth in the area. There are no obvious large sites around Heathfield, including Vines Corner. Have never felt there was an easy site there and have conveyed that view to applicants.

Q. What steps does the District Council take to ensure the conditions placed on planning approvals, particularly following Committee meetings, are fully met by the developer ?

- A. Enforcement action is reactionary as we do not have the resources to monitor sites proactively and have not had this for some time.
- Q. When major new applications are approved how is the necessary primary care service in support of that development assessed?
- A. If it is an allocated site then there will be evidence gathered to inform allocation, that evidence will then inform policy and be set out in a way to capture that. If the application has just been submitted then the infrastructure requirement comes up during the assessment conversation.
- Q. Shouldn't infrastructure be in place before development starts?
- A. For many years people have been saying this, the difficulty is that the development funds the infrastructure. As part of the White Paper Government is proposing that Councils and infrastructure providers can borrow against projected CIL income, but we will wait and see what happens. Development starts and infrastructure follows, sometimes many years later. This is a problem rooted in the system, if you don't allow development (and to begin) you cannot collect and spend CIL receipts.
- Q. ESCC have said that no development would take place until the road was upgraded, but it has?
- A. We do see responses from Highways that no occupation should happen until key upgrades have happened. There is an operational issue around the time it takes to roll out road improvements. We have started to be honest with district members that they will not see upgrades for many years. A good example is the South Hailsham Cuckoo Fields site.
- Q. In view of the Governments wish to allow our shops to be turned in to dwellings without going through the planning process how may we protect our much valued local shops?
- A. You cannot protect shops, the recent changes to Use Classes Order expands the rights and changes of use. We have long assessed the loss of shops in primary and secondary frontages but Government has introduced legislation that has wiped that away in a swoop. For many uses, it is not development to switch between uses. Some say this is overdue and essential for towns, high streets and shopping parades to have necessary flexibility. However, it will have dramatic impact on town centres as a retail destination.
- Q. Does it interact with designation as a community asset?
- A. We will circulate a recent briefing to WDC Members on this with these minutes. The ACV point isn't affected as it sits outside of the planning system but can be a material consideration. No requirement for planning permission means it can be done if the landowner wants it.
- Q. Can you turn a pub into a house?
- A. No but you could change it into a shop
- Q. In the interests of transparency and openness shouldn't discussions between officers and applicants/landowners be fully disclosed to the public and Members of the Planning Committee before applications are determined?

- A. This is difficult under Data Protection legislation and whether developers would be prepared to divulge their discussions. Once an application is lodged if we receive an FOI we would release the information. If a developer decides not to lodge an application we would not release the pre application information (unless there was consent to do so).
- Q. When approval is given the applicant has to commence development in the period stated in the relevant condition. Would it not speed up the process of actual builds if applicants were required to complete development within a stated period rather than being allowed to sit on development land for sometimes a very long time?
- A. There is a reduced time period for when development begins. Legislation specifies three years to start, but if there are material considerations we can reduce that to two years. Our housing action plan refers to this. It can be seen on line. Completion of development is different although there are powers to serve a completion notice, which is rarely used as if we get that wrong, compensation is payable. The reality is that it is market forces that dictate the build out times.
- Q. What is the current deficit in recreational space in Willingdon and how does the District Council intend to address the deficit? Will land be allocated in the next Local Plan?
- A. For the last plan we did specify allocations and site specific requirements. We are revisiting all the issues again and there will be a new audit of open space and requirements of each part of the district. We will work with all the parish/town councils on all the topics within the plan.
- Q. Willingdon Parish Council Cemetery is fast running out of space. Will the District Council allocate land in the next Local Plan for this purpose?
- A. As part of the evidence gathering for the previous plan we completed an audit on open space and burial grounds, and at that time we sought to capture open spaces on certain sites. The study on burial grounds said the growth envisaged could be accommodated with the space available. If that changes it will be reflected in the evidence and inform strategy in the next plan.
- Q. Is there any update regarding the local Medical Centre, now that the proposed land known as Hindsland appears to be up for sale/sold to a new developer?
- A. There have been many queries around this site and we don't know for certain, we do not monitor land registry changes. There are no planning applications submitted.
- Q. Communication of planning applications to neighbours?
- A. Covered above.
- Q. Forecasting CIL?
- A. We are about to incorporate an upgrade to the system which will do two things: introduce a workflow process which means you can see where an application is in the timeline and a S106 and CIL module. It will enable anyone to interrogate parish specific queries and get an idea of where we are in terms of CIL returns. The upgrade is due towards the end of September, subject to testing. Once we have that module you should be able to plan for financial uplift.

- Q. Can you use Article 4 directions to prevent some permitted developments?
- A. The problem is we would have to argue nationally applicable policies should fall away in a specific parish and that is a very high bar. Whenever we have approached the SoS on Article 4 we have failed. So the case that it would change character or affect residents would equally apply across the country and we are not sure that would be enough to convince the Secretary of State that nationally applicable policies should fall away in specific locations.
- Q. Would the AONB not be considered?
- A. This point would just as equally apply elsewhere. If the SoS agrees for us then he would have to agree with other areas.
- Q. Planning for the Future White Paper?
- A. Answered above.
- Q. London boroughs and affordable housing provision in Wealden district?
- A. There have been recent exchanges around Heathfield specifically. We have not had any pre-app discussions with any London borough about any site within the AONB. A difficulty is that it may well have happened but gone undetected. If there is a site which already benefits from planning permission then anyone can buy it and build it out. If a London borough did purchase a site and build 100% affordable housing and is within the terms of the planning permission then there is very little we can do about it.
- Q. If they did get planning permission does it come out of our allocation, who lives there as it doesn't meet Wealden's affordable housing needs?
- A. If there is planning permission the s106 has nomination rights of people within Wealden. However above 35% there is nothing we can do.
- Q. Do we have an update to the housing figures?
- A. The figures are currently being updated. The number is not as great as we hoped and that is partly due to the time lag for s106 translating resolutions into planning permissions. Most of the applications being outline applications requires another stage (Reserved Matters). The five year supply figure is around 4 years at present.
- Q. WDC Allocations Policy, has this been updated?
- A. No, but will check and confirm.
- The WDC Allocations policy can be seen:
- <https://www.wealden.gov.uk/housing-health-and-advice/housing/housing-options-homelessness-advice/housing-options/allocation-of-homes-banding-and-categories/>
- Q. Sites put forward in Call for Sites, we are requesting information about all sites put forward.
- A. If you want to make a formal FOI request you can do so, we are happy to work with you on this.

3	Policy Updates Wealden Application Validation Checklist – this is what we ask of developers and agents when they make applications and it is out of date. We are concluding our review and will report to the CAG on 15 September and then formally consult. It seeks to be more flexible in terms of the information on the application and more restrictive in instances. We will be updating all topics required for applications.	
4	Performance There is still a small backlog for South and the changes to the Scheme of Delegation have helped. Some cases are waiting on validation but we are in a good position. Officers are busy and carrying high caseloads but are doing okay. We have held 14 remote meetings. We are open for business and positive in dealing with applications.	
5	Staff Updates We have recently advertised the role of Development Manager and are pleased to confirm that Sam Prior (South Team Leader) has been appointed. Sam is currently on maternity leave and will take up the post on her return. We have appointed Eimear Murphy to the South Team Leader post for a period of 10 months to cover maternity leave. Eimear starts mid September. Roger Bates, Admin and Technology Manager, is retiring mid September and the post will be advertised in due course.	
6	Appeal Updates There has only been one high profile appeal, details attached. This was Horebeech Lane in Horam which we did not contest due to the failure of our plan. The Planning Inspector felt that the site was overdeveloped and questioned the impact on the character of the area. Q. Has this made you question other decisions not to contest the appeal? A. In this particular instance the Inspector placed more than we did on the impact on the character of the area, its fringe location and car dominance. It is a decision we have taken account of. The developer has signalled that they may challenge the decision.	
7	Any Other Business None	



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: 7th 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.
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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 layout¹ 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.

¹ Site Layout Drawing No. 3278:01 Revision U.

Background and Main Issues

6. The main parties consider that the proposed development should be permitted². 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 dwellings³ 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

² Statement of Common Ground (SoCG) paragraph 6.18.

³ 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 appellant⁴. 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

⁴ 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 SHELAA⁵ 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 Plan⁶ 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.

⁵ Wealden Strategic Housing and Economic Land Availability Assessment (SHELAA) (2019).

⁶ 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 Horebeech 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 Horebeech 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 Addendum⁷ 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 District⁸. 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 pressure⁹. 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.

⁷ Ref: as per footnote 4.

⁸ 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.

⁹ 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

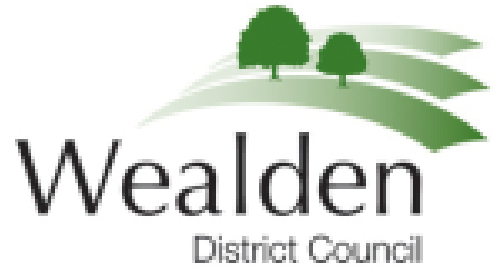
services and facilities in Horam, which could help support their future provision. The above together weighs substantially in favour of the proposal.

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

National Planning Policy, Permitted Development and Use Classes Update



Member update on what's been happening and how this might affect Wealden

It's always busy just ahead of the Government Summer recess, but this year has been unprecedented in terms of changes to Planning. Most Members will have tracked these changes, particularly permitted development changes. However last week also saw consultation on the Planning for the Future White Paper – changes to both national planning policy but also decision making.

It's very much a blink and you missed it, or go on Holiday and you missed it!, so we thought it would be helpful to outline all these changes in one place.

Government's Planning for the Future white paper

What is it?

The Ministry of Housing, Communities and Local Government (MHCL) last week published its much-anticipated Planning for the Future white paper outlining far-reaching proposed changes to the planning system.

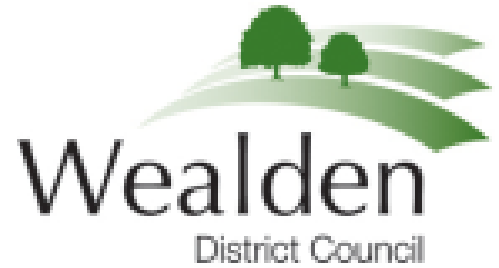
Key points

Here are some of the key proposals and points in the [84-page consultation document](#), which promises a major shake-up of the current system of local plans, development management and developer contributions.

1. Local plans would be simplified and focus on identifying three categories of land – "growth areas" that are "suitable for substantial development"; "renewal areas" that are "suitable for development"; and "protected areas". In "growth areas", outline approval would be automatically granted for forms and types of development specified in the plan. Development in renewal areas would "cover existing built areas where smaller scale development is appropriate" and could include the "gentle densification" of residential areas, development in town centres, and small sites in and around villages. There would be a "statutory presumption in favour of development" specified in the plan. Protected areas, including green belt, conservation areas and Areas of Outstanding Natural Beauty (AONBs), would still be subject to "more stringent" development controls and full planning applications would be required for new schemes.

2. Local plans should be subject to a single and "simplified" statutory "sustainable development" test, replacing the existing "tests of soundness". This new test "would consider whether the plan contributes to achieving sustainable development in

accordance with policy issued by the secretary of state", the consultation states. The test could also "become less prescriptive about the need to demonstrate deliverability".



3. Instead of general policies for development, the document says, local plans would be required to set out site- and area-specific requirements for development, alongside locally-produced design codes. The National Planning Policy Framework (NPPF) "would become the primary source of policies for development management".

4. The legal duty to cooperate, which requires local planning authorities to continuously and effectively engage with neighbours on strategic issues such as housing need, "would be removed". However, it adds that "further consideration will be given to the way in which strategic cross-boundary issues, such as major infrastructure or strategic sites, can be adequately planned for, including the scale at which plans are best prepared in areas with significant strategic challenges".

5. The government is considering scrapping the five-year housing land supply requirement. The document says its "proposed approach should ensure that enough land is planned for, and with sufficient certainty about its availability for development, to avoid a continuing requirement to be able to demonstrate a five-year supply of land". However, it proposes to "maintain the housing delivery test and the presumption in favour of sustainable development as part of the new system".

6. Councils and the Planning Inspectorate would be required through legislation to meet a statutory timetable of no more than 30 months for plan preparation with "sanctions for those who fail to do so". The average time taken from plan publication to adoption rose from an average of 450 days in 2009 to 815 days in 2019, the paper states, while there is "currently no statutory requirement around timescales for key stages of the plan-making process".

7. The need for sustainability appraisals alongside plans would be abolished and instead a "simplified process for assessing the environmental impact of plans, which would continue to satisfy the requirements of UK and international law and treaties".

8. Local plans would need to be "visual and map-based, standardised, based on the latest digital technology and supported by a new standard template", the document says.

9. The planning process would be increasingly digitised, moving from "a process based on documents to a process driven by data". Local authorities would be helped to use digital tools to support "a new civic engagement process for local plans and decision-making".

10. Under a proposed new "fast-track for beauty", proposals for high-quality developments that reflect local character and preferences would benefit from "automatic permission". New development would be expected to create a "net gain" to areas' appearance.

11. Design codes, which would be expected to be prepared locally, would be made "more binding" on planning decisions. A new body would be established to support the delivery of design codes across the country.

12. The standard housing need method would be changed so that the requirement would be "binding" on local planning authorities who would "have to deliver [it] through their local plans". The new method "would be a means of distributing the national housebuilding target of 300,000 new homes annually". It says the requirement would be focused on areas where affordability pressure is highest and on brownfield land. It would also have regard to the "size of existing urban settlements" in an areas and the "extent of land constraints".

13. A new 'single infrastructure levy' will replace the existing developer contributions system of section 106 agreements and the community infrastructure levy. The government says the new levy will be a nationally-set, flat rate charge and would be based on the final value (or likely sales value) of a development. It says it intends the new levy to raise more revenue than under the current system of developer contributions, and deliver "at least as much" affordable housing, and on-site affordable housing, as at present

14. The new levy could be used to "capture a greater proportion of the land value uplift that occurs through the grant of planning permission, and use this to enhance infrastructure delivery. But such a move "would need to be balanced against risks to development viability".

15. The scope of the levy "could be extended to capture changes of use through permitted development rights". Such a move "would allow these developments to better contribute to infrastructure delivery and making development acceptable to the community.

16. Big building sites would be split between developers to accelerate delivery. The government proposes to revise the NPPF to make it clear that masterplans and design codes for sites prepared for substantial development should seek to include a variety of development types from different builders, which would allow more phases to come forward together.

17. Community consultation at the planning application stage is to be "streamlined". Instead, there would be "a new emphasis on engagement at the plan-making stage", the document says.

18. The determination of planning applications "should be faster and more certain, with firm deadlines". The "well-established time limits of eight or 13 weeks for determining an application from validation to decision should be a firm deadline – not an aspiration which can be got around through extensions of time as routinely happens now".

19. Applications should be "shorter and more standardised". There should be just "one key standardised planning statement of no more than 50 pages to justify the development proposals", the paper proposes.

20. Penalties for councils that fail to determine an application within the statutory time limits could involve "the automatic refund of the planning fee for the application". Ministers also "want to explore whether some types of applications should be deemed to have been granted planning permission if there has not been a timely determination".

21. Where applications are refused and the decision is overturned at appeal, the paper proposes that "applicants will be entitled to an automatic rebate of their planning application fee".

22. Each local planning authority would be required to have a chief officer for design and place-making.

23. Fees should continue to be set nationally but "cover at least the full cost" of processing applications, "based on clear national benchmarking". It added that this "should involve the greater regulation of discretionary pre-application charging to ensure it is fair and proportionate".

24. The costs of operating the planning system should be "principally funded" by developer contributions "rather than the national or local taxpayer". Currently, the document says, "the cost of development management activities by local planning authorities is to a large extent covered by planning fees". However, the "cost of preparing local plans and enforcement activities is now largely funded from the local planning authority's own resources".

25. The government has promised to "develop a comprehensive resources and skills strategy for the planning sector to support the implementation of our reforms". Proposals for "improving the resourcing of planning departments" will be published "later this year", it adds.

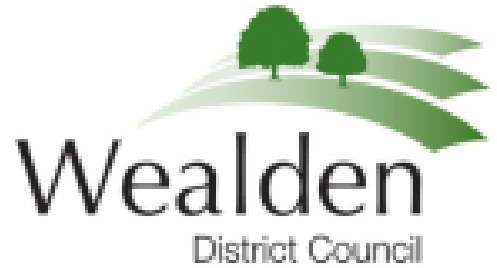
26. The paper promises a "deep dive regulatory review to identify and eliminate outdated regulations which increase costs for local planning authorities, especially to the decision-making process".

27. Councils "should be subject to a new performance framework which ensures continuous improvement across all planning functions from local plans to decision-making and enforcement – and enables early intervention if problems emerge with individual authorities".

28. Consultation on the white paper proposals run for 12 weeks until October 29. The suggested changes to local plans, developer contributions and development management "would require primary legislation followed by secondary legislation". Ministers "would expect new local plans to be in place by the end of the Parliament".

Wealden response

As noted in the last point (28) consultation on these proposed changes run to the end of October. Officers are working on a draft response on behalf of Wealden in consultation with members, including an opportunity for discussion at the CAG on 15th September (2pm).



Permitted Development

What is it?

Permitted development rights (PDRs) are **rights** to make certain changes to a building or its use without the need to apply for planning permission. They derive from a general planning permission granted by Parliament, rather than from permission granted by the local planning authority (LPA).

What's changed?

There are several parts to this, as follows.

To boost construction and housing

Government has published two sets of regulations that introduce a series of new **rights** in relation to the demolition of buildings and their replacement with new housing and upward extensions to residential properties.

We have a dedicated webpage explaining this [here](#) but the details are as follows:

New PDRs right to demolish vacant buildings and replace them with new residential units

One of the regulations enacts a new PDRs **right** to demolish vacant buildings and replace them with new residential units. The statutory instrument is [The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 3\) Order 2020](#). An explanatory memorandum says the new **right** will apply to "vacant and redundant free-standing buildings" that are classed as offices, premises for research and development or light industrial processes, and "purpose-built residential blocks".

Buildings must have been "entirely vacant for at least six months prior to the date of the application for prior approval", it goes on to say, and built before 1 January 1990.

The new building cannot be larger than the footprint of the existing building and cannot exceed a maximum size of 1,000 square metres. However, it can be up to seven metres higher to accommodate up to two additional residential storeys, within a final overall maximum height of 18m, the note says.

The local authority must decide on an application for prior approval within eight weeks, after which the applicant has a **right** of appeal to the secretary of state. Matters to be considered through prior approval include:

- the transport and highways impacts,
- contamination and flooding risks ,
- the impact of noise on the future residents,
- design and external appearance of the new building,
- the adequacy of natural light in all habitable rooms of each new dwellinghouse,
- the impact of the introduction of residential use into an area,
- the impact of the development on the amenity of the new building and of neighbouring premises, including overlooking, privacy and light.

The **right** does not allow for demolition without subsequent construction of a new residential building, nor for the construction of a new residential building on previously cleared land.

Taken together, demolition and replacement build must be completed within three years of the date of the grant of prior approval.

The local authority has to “notify any owners or occupiers adjoining the proposed development”.

The developer must prepare a construction management plan, setting out how it intends to minimise adverse impacts on neighbouring premises

PDRs right allowing homeowners to extend their properties via upward extensions

A second regulation introduces a PDRs **right** allowing homeowners to extend their properties via upward extensions. [The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 2\) Order 2020](#) introduces a permanent right to enabling existing houses that are detached, semi-detached or in a terrace to be extended upwards to provide additional living space by constructing additional storeys.

An explanatory memorandum on the change says the **right** allows the construction of up to two additional storeys on the topmost storey of a detached house of two storeys or more, or one additional storey on a detached house of one storey, above ground level.

The memorandum says that, in a terrace of two or more houses (which includes semi-detached houses) the right “allows the construction of up to two additional storeys on the topmost storey of a house of two storeys or more, or one additional storey on a house of one storey above ground level”.

“Existing accommodation in the roof space of the existing house, including a loft extension, is not considered as a storey for the purposes of this right,” the memorandum says.

The **right** is “subject to a maximum height limit for the newly extended house of 18 metres, and where the house is in a terrace its height cannot be more than 3.5 metres higher than the next tallest house in the terrace”, the explanatory memorandum says.

To prevent overlooking, the document says, a window “cannot be installed in a wall or roof slope of a side elevation of an additional storey built under this **right**”.

The right is also subject to obtaining prior approval from the local authority, which will consider certain matters relating to the proposed construction of additional storeys. These include:

- consideration of the impact on the amenity of neighbouring premises, including overlooking,
- privacy and overshadowing;
- the design, including the architectural features of the principal elevation of the house, and of any side elevation which fronts a highway;
- the impacts a taller building may have on air traffic and defence assets and on protected vistas in London.

Four other new PDRs rights allowing upward extensions

Four new PDRs **rights** allowing upward extensions are also introduced by the same statutory instrument, [The Town and Country Planning \(General Permitted Development\) \(England\) \(Amendment\) \(No. 2\) Order 2020](#). They are:

- Class AA “which permits construction of up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use”;
- Class AB which “permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use”;
- Class AC which “permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses)”;
- Class AD which “permits the construction of new flats on top of detached dwellinghouses.

In the new AA-AD use classes, “two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey”, the notes say. The regulations stipulate that “storey” is defined “so as to exclude any storey below ground level, and any living space within the roof of the dwellinghouse”.

The new PDRs **rights** are subject to a number of limitations and conditions, including a requirement for prior approval from the local planning authority in relation to certain matters. These relate to:

- the transport and highways impacts of the development;
- air traffic and defence asset impacts;
- contamination risks in relation to the building;
- flooding risks in relation to the building;
- the external appearance of the building, including the design and architectural features of the principal elevation and any side elevation that fronts a highway;
- the provision of adequate natural light in all habitable rooms of the new dwellinghouses;
- the impact on the amenity of neighbouring premises including overlooking, privacy and the loss of light;
- whether, because of the siting of the building, the development will impact on a protected views.

The new **rights** do not apply to buildings constructed before 1 July 1948 or after 5 March 2018.

Conversions would not be allowed if the floor to ceiling height of any additional storey, measured internally, would be lower than three metres or "the floor to ceiling height, measured internally, of any storey of the principal part" of the existing property.

COVID19 linked PDRs rights

In a [written ministerial statement on construction](#), Government has explained how the construction industry may adapt its normal practices to operate safely during this time. It also states that, with immediate effect, local planning authorities should take a "swift and positive approach" to requests from developers and site operators for greater flexibility around construction site working hours. This is to ensure that, where appropriate, planning conditions are not a barrier to allowing developers the flexibility necessary to facilitate the safe operation of construction sites during the response to the COVID-19 pandemic and to proceed at pace with work otherwise delayed as a result of COVID-19.

Use Classes Order

What is it?

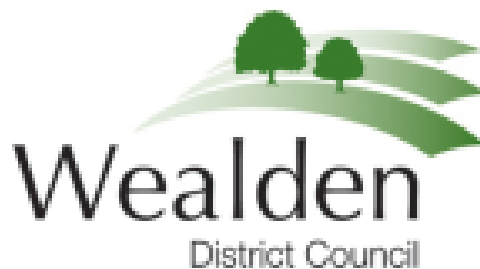
The [Town and Country Planning \(Use Classes\) Order 1987 \(as amended\)](#) puts uses of land and buildings into various categories known as 'Use Classes'.

'Change of use' can occur within the same use class or from one use class to another.

Depending on the specifics of any proposed change of use, including any building work associated with the proposal, it may require an application for planning permission or prior approval.

What's changed?

Government has published regulations to enact a raft of changes to the town centre use class system.



- [The Town and Country Planning \(Use Classes\) \(Amendment\) \(England\) Regulations 2020](#) will introduce three new broad use classes – Class E, Class F1 and Class F2 – in England only.
- Class E – “commercial, business and service” – use class would subsume the existing Class A1 (Shops), Class A2 (Financial and professional services), Class A3 (Restaurants and cafes), and Class B1 (Business) use classes, the regulations say.
- Class F1 relates to “learning and non-residential institutions” and includes any non-residential use for the “provision of education, for the display of works of art (otherwise than for sale or hire), as a museum, as a public library or public reading room, as a public hall or exhibition hall, for, or in connection with, public worship or religious instruction, as a law court”.
- Class F2 relates to “local community” uses. These are listed in the regulations as “a shop mostly selling essential goods, including food, to visiting members of the public in circumstances where the shop’s premises cover an area not more than 280 metres square, and there is no other such facility within 1,000 metre radius of the shop’s location”.
- An explanatory memorandum says that ‘shop’ is defined “as a shop mostly for the sale of a range of essential dry goods and food to visiting members of the public”. It adds that this “provides some protection for such shops while placing those shops found on high streets and town centres in the new ‘commercial’ class”.
- F2 uses also include “a hall or meeting place for the principal use of the local community, an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms, an indoor or outdoor swimming pool or skating rink”
- Exemptions include any “public house, wine bar, or drinking establishment”, “drinking establishment with expanded food provision”, hot food takeaways, live music venues, cinemas, concert halls, bingo halls and dance halls.
- The regulations come into force on 1 September 2020.
- The Government says that Planning Practice Guidance will be updated to reflect the changes before they come into effect.

Conclusion

We hope this update is helpful and that you find it useful. There is an awful lot to take in.

As ever, do please get in touch and we will try to help.

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