

SITE PLAN

RR/2020/2132/P

BEXHILL

20 Seabourne Road
The Warren – Plot 3



Rother District Council

Report to - Planning Committee
Date - 23 June 2022
Report of the - Director - Place and Climate Change
Subject - Application RR/2020/2132/P
Address - 29 Seabourne Road
The Warren - Plot 3
BEXHILL
Proposal - Demolition of existing bungalow and detached garage and construction of 3 No. new houses (previously approved under planning permission RR/2017/2588/P).

[View application/correspondence](#)

RECOMMENDATION: It be **RESOLVED** to **GRANT (FULL PLANNING) DELEGATED (SUBJECT TO A SECTION 106 LEGAL AGREEMENT TO SECURE AN OFF-SITE RECEPTOR SITE FOR THE EXISTING REPTILE POPULATION)**

Director: Ben Hook

Applicant: Mr Andrew Stewart Christie
Agent: Mr Andrew Stewart Christie
Case Officer: Mr Edwin Corke
(Email: edwin.corke@rother.gov.uk)

Parish: Bexhill Pebsham/St Michaels
Ward Members: Councillors J.H.F. Brewerton and C.A. Clark

Reason for Committee consideration: Director – Place and Climate Change referral: Significant public interest received in relation to the impact of the proposed development on wildlife, particularly badgers.

Statutory 8-week date: 29/10/21
Extension of time agreed to: 23/02/2022

Members visited the application site prior to the Planning Committee meeting on 26 May 2022.

1.0 UPDATE

1.1 The application was reported to the May Planning Committee with an officer recommendation to grant planning permission subject to a legal agreement to secure an off-site receptor site for the existing reptile population, and

subject to planning conditions, some of which secure mitigation and compensation measures for badgers.

- 1.2 Members raised concern about the impact of the proposal on badgers despite being able to secure appropriate mitigation and compensation measures using planning conditions. Having regard to legal advice, Members resolved to defer a decision to consider/review the Government guidance *'Protected species and development: advice for local planning authorities (How to assess a planning application when there are protected species on or near a proposed development site)'*.
- 1.3 Section 4 of the guidance requires local planning authorities to consider if a licence is likely to be granted before planning permission is granted. The main points are as follows:
- Protected species licensing requirements are in addition to the requirements for planning permission. Licences are subject to separate processes and specific policy and legal tests.
 - You must be satisfied that if a licence is needed it is likely to be granted by Natural England (NE) or DEFRA before you give planning permission.
 - For European Protected Species (EPS) you need to check that:
 - the activity is for a certain purpose, for example it's in the public interest to build a new residential development;
 - there is no satisfactory alternative that will cause less harm to the species; and
 - the development does not harm the long-term conservation status of the species.
 - If the developer does not meet the three for EPS, NE or DEFRA cannot issue them with a licence for their activity. The developer may not be able to implement their planning permission. NE cannot provide advice on this. You should seek legal advice if you are not sure about the tests.
 - Licensing policies for EPS allow flexibility from industry standards and aim to reduce unnecessary costs, delays and uncertainty, and achieve better conservation outcomes. Where a developer relies on these policies you need to take into account whether NE or DEFRA are likely to grant a licence for the proposed development.
- 1.4 Section 5 of the guidance specifically relates to making a decision about a planning application. It says that if the proposal is likely to affect a protected species you can grant planning permission where:
- A qualified ecologist has carried out an appropriate survey (where needed) at the correct time of year.
 - There's enough information to assess the impact on protected species.
 - All appropriate avoidance and mitigation measures have been incorporated into the development and appropriately secured.
 - A protected species licence is needed it is likely to be granted by NE or DEFRA.
 - Any compensation measures are acceptable and can be put in place.
 - Monitoring and review plans are in place, where appropriate.
 - All wider planning considerations are met.
- 1.5 In this case, the crux of the matter is whether a protected species licence is likely to be granted by NE. If it is, then planning permission should be

granted for the proposal, as all of the criteria set out under section 5 of the guidance will have been met.

- 1.6 Legal advice has been sought and the two responses received from NE has been assessed. The responses set out matters that NE will consider when a licence application is ultimately made and the fact that the developer will ultimately have to satisfy NE on matters of mitigation in order to obtain the licence. Neither email gives an indication of the actual outcome of such an application.
- 1.7 The Government guidance does not require the that Local Planning Authority correctly foretell the outcome of a licence application but only to consider its likelihood. It is advised that in the current case, NE has indicated that there would be adverse impact from the development proposed (so that a licence will be required) but has not provided any indication, let alone a negative one, of the outcome of a future application. On that basis, it would seem a reasonable inference to draw that NE is reasonably likely to grant a future licence application upon the developer satisfying NE that appropriate mitigation is to be provided. This assessment is strengthened having regard to the judgment in *R(oao Prideaux) v Buckinghamshire CC* [2013] EWHC 1054 (Admin). While the facts of that case are not exactly the same, the Court made a clear finding that it was not up to the Local Planning Authority to step into the shoes of NE nor to 'supervise' NE's function as being responsible for the protection of species and habitats. This view is also echoed in the comments of the County ecologist where she raises no objection particularly in light of NE's role in assessing any ultimate application for a licence.
- 1.8 The Applicant has committed to pursue mitigation and that mitigation could change during consideration of a licence application to NE. The required mitigation is for NE to agree with the Applicant. There is no contradiction from NE or the County Ecologist on this point and hence there is considered to be a likelihood that mitigation could be achieved. A pre-commencement condition requires a licence to be obtained prior to any works on site. Accordingly, if a licence is not granted then no development can take place. If such licence subsequently required amendment of the development scheme, then any amendment is likely to require formal approval from the Local Planning Authority.

2.0 SUMMARY

- 2.1 The proposal is a resubmission of a previously approved scheme for replacement of a bungalow and detached garage with a terrace of three houses. This current application was submitted prior to the previous planning permission expiring.
- 2.2 A key issue is the effect of the proposal on wildlife. In this regard, the Alternative Badger and Reptile Mitigation Strategy proposes the creation of an artificial sett on the site – located to the east of the existing main sett – followed by the permanent closure of the main and annex setts, and the establishment of underground barriers to prevent badgers tunnelling into neighbouring properties. The alternative strategy also proposes the creation of a 5m wide badger/reptile/biodiversity habitat area across the northern part

of the site, with the existing reptile (slow worm) population relocated to this area – this is as per the original mitigation strategy.

- 2.3 The County Council ecologist accepts that the alternative mitigation strategy would be the best option to retain badgers on site, and to address the concerns raised about them being displaced into, and excavating under, neighbouring properties. A Badger Mitigation Licence would be required from NE to execute the works, but it should be noted that NE will not consider a mitigation licence application until planning permission has been granted for the proposal. It should also be noted that planning permission gives no guarantee that NE will grant a licence. Without a licence, the proposed development will not be able to proceed. As a safeguard, a condition can be attached to the planning permission requiring proof that a licence has been obtained prior to works commencing.
- 2.4 With regard to the proposed reptile mitigation, the County ecologist has advised that the construction of an artificial sett would impact all remaining reptile habitat on site, and as such, an off-site receptor site for the existing reptile population would need to be secured. A Section 106 Legal Agreement would be required to secure this off-site receptor site.
- 2.5 Overall the proposal is for a sustainable residential development, which will have an acceptable impact on the environment, including wildlife, and will make a positive contribution to the District's housing supply. Planning permission should be granted, subject to a legal agreement to secure an off-site receptor site for the existing reptile population, and subject to appropriate conditions.

2.6 PROPOSAL DETAILS

PROVISION	
No of houses	3
CIL (approx.)	£16,781
New Homes Bonus (approx.)	£20,052

3.0 SITE

- 3.1 The application relates to a vacant residential plot located on the northern side of Seabourne Road, close to the junction with Bishops Walk. It lies within a large residential area within the Development Boundary for Bexhill.
- 3.2 The site slopes down from south to north and previously contained a detached bungalow and single garage. Ecological surveys have confirmed the presence of two badger setts and slow worms.
- 3.3 There are three adjoining properties – No. 4 Bishops Walk, which is a detached bungalow to the north, No. 33 Seabourne Road, which is a detached bungalow to the east, and No. 2 Bishops Walk, which is a detached bungalow to the west.
- 3.4 The surrounding area contains a mixture of bungalows, chalet-bungalows and two-storey houses on varying plot sizes. There is a variety of facing materials including brick, tile hanging and render.

4.0 PROPOSAL

- 4.1 In January 2015 planning permission (Application Ref: RR/2014/1455/P) was granted for demolition of existing bungalow and detached garage and construction of three new houses on the site, arranged as a terrace. This was subsequently renewed in January 2018 under Application Ref: RR/2017/2588/P. The planning permission was never implemented and expired in January 2021.
- 4.2 The current application was submitted prior to the previous planning permission expiring and is a resubmission of that scheme. It is once again proposed to erect a terrace of three 2/3-bedroom dwellings on the site, in-between the neighbouring properties on either side.
- 4.3 The building follows a chalet-style design with first floor accommodation provided within the roof space. The main pitched roof faces Seabourne Road and has two pitched roof dormers in both the front and rear slopes. The main roof is flanked on either side by slightly lower gable-ended pitched roofs. These run at right angles to the main roof with the gable ends facing the front and rear of the site respectively. The external materials palette consists of brickwork and tile hanging to the walls and plain tiles to the roof.
- 4.4 Due to the sloping nature of the site, the building height increases to the rear as the ground level falls away.
- 4.5 The proposal includes the formation of a shared vehicular access onto Seabourne Road and the creation of a shared car parking and turning area in front of and to the side of the dwellings.
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5.0 HISTORY

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|-----|----------------|--|
| 5.1 | RR/2014/459/P | Demolition of existing bungalow and detached garage and construction of 3 No. new houses – Refused. |
| 5.2 | RR/2014/1455/P | Demolition of existing bungalow and detached garage and construction of 3 new houses – Granted. |
| 5.3 | RR/2017/2588/P | Demolition of existing bungalow and detached garage and construction of 3 No. new houses – Granted. |
| 5.4 | RR/2021/1234/P | Demolition of existing dwelling and construction of 3no detached family dwellings including gardens, parking and access to Seabourne Road (alternative proposal to RR/2020/2132/P) – Not yet determined. |
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6.0 LEGISLATION AND POLICIES

- 6.1 The following wildlife legislation is relevant to the proposal:
- Wildlife and Countryside Act 1981
 - Protection of Badgers Act 1992
 - Natural Environment and Rural Communities Act 2006
 - Environment Act 2021

- 6.2 The following policies of the [Rother Local Plan Core Strategy 2014](#) are relevant to the proposal:
- PC1 (Presumption in Favour of Sustainable Development)
 - OSS1 (Overall Spatial Development Strategy)
 - OSS2 (Use of Development Boundaries)
 - OSS3 (Location of Development)
 - OSS4 (General Development Considerations)
 - BX1 (Overall Strategy for Bexhill)
 - BX3 (Development Strategy)
 - SRM1 (Towards a Low Carbon Future)
 - SRM2 (Water Supply and Wastewater Management)
 - CO6 (Community Safety)
 - EN3 (Design Quality)
 - EN5 (Biodiversity and Green Space)
 - EN7 (Flood Risk and Development)
 - TR3 (Access and New Development)
 - TR4 (Car Parking)
- 6.3 The following policies of the [Development and Site Allocations Local Plan 2019](#) are relevant to the proposal:
- DRM1 (Water Efficiency)
 - DRM3 (Energy Requirements)
 - DHG3 (Residential Internal Space Standards)
 - DHG4 (Accessible and Adaptable Homes)
 - DHG7 (External Residential Areas)
 - DHG11 (Boundary Treatments)
 - DHG12 (Accesses and Drives)
 - DEN1 (Maintaining Landscape Character)
 - DEN4 (Biodiversity and Green Space)
 - DEN5 (Sustainable Drainage)
 - DEN7 (Environmental Pollution)
 - DIM2 (Development Boundaries)
- 6.4 The National Planning Policy Framework, Planning Policy Guidance, Government guidance entitled *Protected species and development: advice for local planning authorities (How to assess a planning application when there are protected species on or near a proposed development site)* and previous planning permissions are also material considerations.
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7.0 CONSULTATIONS

- 7.1 [Lead Local Flood Authority \(East Sussex County Council\)](#) – **UNABLE TO RESPOND**
- 7.2 [East Sussex County Council Ecologist](#) – **NO OBJECTION**
- 7.2.1 Subject to securing an off-site receptor site for the existing population of reptiles and the imposition of conditions.
- 7.3 [Natural England](#) – **GENERAL COMMENT**

- 7.3.1 A Badger Mitigation Licence is required. Natural England will not consider a mitigation licence application until planning permission has been granted.
- 7.3.2 Notwithstanding the above, Natural England is concerned that there appears to be insufficient space at the site, advising that the development plans will need to be altered in order to practically accommodate the badgers in an artificial sett on site.
- 7.4 Waste & Recycling (Rother District Council) – NO OBJECTION
- 7.4.1 The three sets of bins would need to be presented where the entrance to the drive meets the main road.
- 7.5 Planning Notice
- 7.5.1 Over 600 letters of **OBJECTION** have been received. The main concern raised is summarised as follows:
- Badgers should not be harmed.
- 7.5.2 Additional concerns raised are summarised as follows:
- Overdevelopment of the site.
 - Design not in keeping with the character and appearance of the area.
 - Overlooking and loss of privacy.
 - Loss of light to neighbours.
 - Overshadowing of neighbouring properties.
 - Inadequate parking provision.
 - Proposed gardens would be restricted in size and out of keeping with large gardens of surrounding properties.
 - The location of at least one of the proposed soakaways appears to be directly on a badger sett.
 - Inadequate surface water drainage provision resulting in increased flood risk to surrounding properties.
 - Poor architectural design.
 - Overbearing.
 - Noise, fumes and extra traffic.
 - Harmful to wildlife.
 - No tree survey included – potential impact on bats using trees as roosts.
 - Works have already been carried out on the site (e.g. buildings partly demolished), which have been harmful to wildlife.
 - County Ecologist recommends the buildings are moved 3m south, which would take them out of the building line, so against the character of the area.
 - County Ecologist recommends construction near the badger sett should be conducted by hand tools as far as possible. Is it a serious expectation that the developers will construct portions of the houses with hand tools?
 - Details of the badger setts not shown on the Council's website.
 - Why not simply leave what there already is and reduce the footprint of the building to a similar style - a single storey single dwelling.
 - Development has and will continue to affect health unless refused.
 - The developer is relying on the previously granted application as having given 'principle of development'.

- Previous application did not meet the criteria yet was granted - suggests this is already decided and will go ahead.
- Physical changes to the application site and changes to legislation etc. since the 2014 grant of planning permission have not been mentioned.
- The bus stop was also moved.
- A site visit was conducted on 15/2/22 but the committee members did not look around the site. Another site visit should be conducted to fully appreciate the existing situation and the implications of the proposed development on the badgers and neighbouring properties.
- Developer should submit scaled drawings showing the relationship of the build to each of the 3 properties surrounding the site, as the topography of the land is not clear from existing drawings.
- It would be useful if the full plans and all correspondence relating to the proposal are shown under this planning application reference, as a lot of the paperwork is missing. It is very difficult to understand what is proposed.
- The Committee should have unredacted paperwork so that they are able to make an informed decision.
- Natural England have quite clearly stated there is insufficient space for an artificial badger sett to be built where proposed by the Ecology Co-op.
- Planning department needs to know whether a licence is likely to be issued by Natural England in order to be able to approve planning permission under the Standing Advice.
- Proposal cannot comply with the 'net biodiversity gain' required under new legislation.
- Impossible to risk assess potential damage to neighbouring properties as the advanced ground radar technology did not provide sufficient evidence for a mitigation plan. Advice from the previous ecologist stated a more extensive search was carried out, this did not happen.
- A new tunnel has been built by the badgers.
- The previous application in February 22 was deferred to explore the effects on the neighbours properties and on the wildlife on this development. How has this been evidenced?
- How will the development affect the neighbours if the badgers remain?
- The ecologist states that cameras are needed to be set up to gain knowledge of where badger tunnels extended to on neighbouring properties and monitor badger activity.
- Applicant has not provided details of how neighbouring boundaries and properties are to be protected.
- Developers and the police do not appear to be concerned for established wildlife on site. What guarantee is there that the developers will adhere to any promises if not given in writing?
- Who will be responsible for structural damage once machinery starts digging 2 metre trenches?
- The 5m exclusion zone for the badgers how long does anyone think they will survive locked in this area, it is all very unclear on the ecology report and nothing is drawn to scale so impossible for anyone to know proposed size of artificial sett.

7.5.3 Four letters of **SUPPORT** have been received. The reasons are summarised as follows:

- Will provide affordable local homes.

- Construction period will provide lots of local businesses with work.
- Derelict site will be a brilliant place for beautiful homes to develop.

7.5.4 Three letters with **GENERAL COMMENTS** have been received. The comments are summarised as follows:

- Badgers should not be harmed.

7.6 Bexhill Town Council – **NO COMMENTS RECEIVED**

7.6.1 The planning application was submitted before the Town Council was created.

8.0 LOCAL FINANCE CONSIDERATIONS

8.1 The proposal is for a type of development that is Community Infrastructure Levy (CIL) liable. The total amount of CIL money to be received is subject to change, including a possible exemption, but the development could generate approximately £16,781.

8.2 The proposal is one that would provide New Homes Bonus (subject to review by the Government). If New Homes Bonus were paid it could, assuming a Band D property, be approximately £20,052 over four years.

9.0 APPRAISAL

9.1 The main issues are determined to be:

- The effect of the proposal on the character and appearance of the area.
- The effect of the proposal on wildlife.
- The effect of the proposal on the amenities of neighbouring properties.
- Whether the proposal would be capable of accommodating the reasonable expectations of likely occupiers, including in terms of indoor and outdoor space and the provision of appropriate means of access for disabled users.
- Highway matters, including parking provision.
- Foul and surface water drainage provision.

9.2 Character and appearance of the area

9.2.1 Policies OSS4 (iii) and EN3 of the Core Strategy and Policy DEN1 of the DaSA Local Plan seek to ensure that new development is of high design quality that respects, contributes positively towards, and does not detract from the character and appearance of the locality.

9.2.2 The surrounding area contains a mixture of bungalows, chalet-bungalows and two-storey houses on varying plot sizes. There is a variety of facing materials including brick, tile hanging and render.

9.2.3 As per the previously approved schemes, the proposal would introduce a terrace of 3 houses on the site. The new building would be larger than the previous bungalow and would therefore be more prominent in the street

scene. However, it would be set well back from the road – in line with the established building line – with good separation to the side and rear boundaries. The building also follows a chalet-style design which seeks to avoid excessive height or bulk. The main pitched roof of the proposed terrace would only be some 400mm higher than the roof of the previous bungalow. In addition, the proposed external materials palette of brickwork and tile hanging to the walls and plain tiles to the roof would be in keeping with the mix of facing materials in the surrounding area.

- 9.2.4 The above combination of factors would allow the proposal to integrate appropriately with the surrounding development. Conditions relating to external materials, hard and soft landscaping, and boundary treatment are necessary in order to preserve the visual amenities of the area.

9.3 Wildlife

- 9.3.1 A significant number of objections have been received about the impact of the proposed development on wildlife, particularly badgers.

- 9.3.2 Section 40(1) of the Natural Environment and Rural Communities Act 2006 says that:

“The public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.”

- 9.3.3 Policy EN5 (ix) of the Core Strategy and Policy DEN4 (ii) of the DaSA Local Plan require developers to integrate biodiversity into development schemes by avoiding adverse impacts from development on biodiversity or habitat, or where wholly unavoidable, provide appropriate mitigation against or compensation for any losses.

- 9.3.4 The Applicant has submitted ecological reports produced in October and November 2021. There are three ecological constraints associated with this site: badgers, reptiles and breeding birds. However, none of these preclude the proposed development.

- 9.3.5 With regard to badgers, these are protected under the Protection of Badgers Act 1992. Under the Act, it is an offence *inter alia* to: wilfully kill, injure or take a badger, or attempt to do so; cruelly ill-treat a badger; or intentionally or recklessly interfere with a badger sett, by a) damaging a sett or any part of one, b) destroying a sett, c) obstructing access to or any entrance to a sett, d) causing a dog to enter a sett, or e) disturbing a badger when it is occupying its sett. Activities that can affect badgers include noise, additional lighting or vibration.

- 9.3.6 Surveys have confirmed the presence of two setts on site: a main sett with eight active entrances in the north-west part of the site (with an additional two entrances in the garden of the neighbouring property, no. 2 Bishops Walk); and an annex/subsidiary sett with one active entrance by the western site boundary.

- 9.3.7 The original mitigation strategy recommended retention of the main sett, with safeguards to protect badgers during development, and closure of the

annex sett under licence. It also proposed the creation of a 5m wide badger/reptile/biodiversity habitat area across the northern part of the site. The Applicant's new ecological consultant says:

"The problem with this strategy is that once excluded from the main sett, the displaced badgers would have no alternative place of shelter and are likely to establish new setts elsewhere. This could lead to significant management problems within the active construction site, and a high risk of damage to neighbouring properties by displaced badgers. In the long term, the risk of structural damage to the new properties and neighbours remains the same once the development has been completed."

9.3.8 The proposed alternative mitigation strategy is as follows:

"The proposed solution put forward by the Ecology Co-op involves the creation of an artificial sett on the north-east corner of the site and then permanently excluding badgers from both the main and annex setts under licence. This approach will enable permanent underground badger proofing to be installed around the site boundary and development site to prevent badgers from excavating tunnels under neighbouring properties. The proofing works would be completed in two stages, with that in the northeast corner installed before the artificial sett, and then around the area of the main sett once the badgers have been excluded and have established into the artificial sett."

This is a standard approach to badger mitigation that Natural England routinely licence, provided that the methods adhere to best practice guidance carried out successfully by The Ecology Co-op on other projects. The proposed 5m buffer zone along the northern section of the site would be retained as set out in the original proposal, together with a corridor for badgers along the western boundary so that badgers can disperse for foraging over their home territory as before the scheme."

This strategy does rely on the full co-operation of the neighbouring homeowners to permit ecologists to install one-way badger gates on the main sett entrances and subsequently carry out excavation works to the main sett once badger have been excluded. However, ultimately this approach will be beneficial to them in the long term by preventing badgers from extending the sett under their property, whilst still ensuring that the badgers are able to continue to exhibit their natural behaviour and remain safe at the site."

9.3.9 The proposed badger proofing measure is galvanised chain-link fencing buried to a depth of 2m. This underground barrier would prevent badgers digging beneath the adjacent properties. The County ecologist has recommended that the barrier is installed along the western and northern boundaries of the site, and potentially the eastern boundary. The exact position can be secured by condition. In addition to this, the Applicant has now agreed to fund and install above-ground badger proofing to the eastern and western boundaries in order to prevent direct access by badgers from the active main sett from entering the gardens of the adjacent properties.

9.3.10 The County ecologist accepts that the alternative mitigation strategy would be the best option to retain badgers on site, and to address the concerns

raised about them being displaced into, and excavating under, neighbouring properties. A Badger Mitigation Licence would be required from NE to execute the works, but it should be noted that NE will not consider a mitigation licence application until planning permission has been granted for the proposal. It should also be noted that planning permission gives no guarantee that NE will grant a licence. Without a licence, the proposed development will not be able to proceed.

- 9.3.11 At this stage NE has advised that there appears to be insufficient space at the site, advising that the development plans will need to be altered in order to practically accommodate the badgers in an artificial sett on site. The Applicant's ecological consultant has also pointed out that the proposed badger mitigation strategy relies on the full co-operation of the neighbouring homeowners to permit ecologists to install one-way badger gates on the main sett entrances and subsequently carry out excavation works to the main sett once badger have been excluded. These matters are however, subject to consideration under the Badger Mitigation Licence application, which cannot be made to NE until planning permission has been granted for the proposal. It should also be noted that any badger mitigation could change during consideration of a licence application to NE. Any changes to the design and layout etc. of the development which may arise from the licencing regime, would need to be subject to formal consideration. As a safeguard, a condition can be attached to the planning permission requiring proof that a Badger Mitigation Licence has been obtained prior to works commencing.
- 9.3.12 The Applicant has committed to pursue mitigation and that mitigation could change during consideration of a licence application to NE. The required mitigation is for NE to agree with the Applicant. There is no contradiction from NE or the County Ecologist on this point and hence there is considered to be a likelihood that mitigation could be achieved. Given that likelihood, having regard to the Government guidance it is considered reasonable to grant permission subject to the recommended conditions.
- 9.3.13 Turning to reptiles, slow worms, grass snakes, common lizards and adders are protected against intentional killing or injuring under Schedule 5 of the Wildlife and Countryside Act 1981.
- 9.3.14 A reptile survey has confirmed a good population of slow worms distributed across the site, with the presence of juveniles indicating that it is a breeding population.
- 9.3.15 The proposed development would result in the loss of the majority of suitable reptile habitat. The alternative mitigation strategy proposes the creation of a 5m wide badger/reptile/biodiversity habitat area across the northern part of the site, with the existing reptile (slow worm) population relocated to this area. This is as per the original mitigation strategy. However, the County ecologist has advised that the construction of an artificial sett would impact all remaining reptile habitat on site, and as such, an off-site receptor site for the existing reptile population will need to be secured. The Applicant's ecological consultant has accepted this and is currently exploring options for receptor sites in the local area. Ultimately, the provision of an off-site receptor site will need to be secured through a Section 106 Legal Agreement. A detailed ecological design strategy

addressing the rescue and translocation of reptiles has been recommended by the County ecologist and this can be secured by condition.

- 9.3.16 With regard to breeding birds, no bird nests were observed on the date of survey. Notwithstanding this, the site has the potential to support breeding birds. Under Section 1 of the Wildlife and Countryside Act 1981, wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. In order to avoid disturbance to nesting birds, any demolition of buildings or removal of scrub/trees that could provide nesting habitat should be carried out outside the breeding season (generally March to August). If this is not reasonably practicable within the timescales, a nesting bird check should be carried out prior to any demolition/clearance works by an appropriately trained, qualified and experienced ecologist, and if any nesting birds are found, advice should be sought on appropriate mitigation.
- 9.3.17 The above information regarding breeding birds can be brought to the Applicant's attention by way of a note on the decision notice.
- 9.3.18 Neighbours are concerned that the proposal will not secure the minimum 10% Biodiversity Net Gain, as required by the Environment Act 2021. For the avoidance of doubt, this does not become a mandatory requirement until November 2023. Nevertheless, measures to enhance the site for biodiversity can be secured by condition.

9.4 Amenities of neighbouring properties

- 9.4.1 Policy OSS4 (ii) of the Core Strategy requires development to not unreasonably harm the amenities of adjoining properties.
- 9.4.2 The application site is enclosed by residential properties on three sides. Use of the site would intensify as a result of the proposal, but there is nothing intrinsically harmful about domestic activities taking place in a residential area within a defined settlement. It is not considered that the intensification in use and resulting noise and disturbance (including from additional vehicle movements) arising from two additional dwellings would be unduly intrusive to neighbouring occupiers. Therefore, the amenities of adjoining properties would not be unreasonably harmed in relation to this matter.
- 9.4.3 In relation to light and outlook, the main bulk of the proposed terrace would be positioned between the flank walls of the neighbouring bungalows on either side (no. 33 Seabourne Road and no. 2 Bishops Walk), with a minimum separation of some 4m to the common boundaries with both those properties. This combination of factors would ensure that the building would not result in loss of light or outlook to the detriment of residential amenity. With regard to the neighbouring property to the north (no. 4 Bishops Walk), the rear elevation of the proposed terrace would be some 17.5m away from the common boundary with that property. This measure of separation would ensure that loss of light and outlook would not occur.
- 9.4.4 Turning to privacy, the main outlook from the windows serving the principal rooms of the proposed dwellings would be over the front and rear gardens of the respective dwellings. Where windows/rooflights are proposed in the side elevations, these are either high level or small hallway windows. For these

reasons, harmful overlooking of the neighbouring properties on either side would not occur. With regard to the neighbouring property to the north (no. 4 Bishops Walk), the separation distance of some 17.5m to that property is considered to be sufficient to prevent harmful overlooking from the rear facing windows of the proposed dwellings.

- 9.4.5 Overall it is not considered that the proposal would unreasonably harm the amenities of neighbouring properties.

9.5 Needs of occupiers

- 9.5.1 Policy OSS4 (i) of the Core Strategy requires all development to meet the needs of future occupiers, including providing appropriate amenities.

- 9.5.2 Policy DHG3 of the DaSA Local Plan requires all new dwellings to meet the minimum internal space in line with the Nationally Described Space Standards (NDSS).

- 9.5.3 The proposal is for three 2/3-bedroom houses. The end dwellings would each have a gross internal floorspace of 98sqm. The floorspace of the middle dwelling would be 82qm. According to the NDSS, a minimum gross internal floorspace of 84sqm should be provided for a 3-bedroom two-storey dwelling. This would be achieved for the two end dwellings but not the middle dwelling, which requires an additional 2sqm of floorspace. In this case however, the 'third' bedroom on the ground floor of the middle dwelling does not qualify as a bedroom, as it does not meet the minimum floor area requirement of 7.5sqm for a single bedroom. As the room is also shown as a study on the floor plans, it is treated as such for the purpose of determining this application. In this regard, the middle dwelling would achieve the minimum gross internal floorspace requirement of 70sqm for a 2-bedroom two-storey dwelling.

- 9.5.4 Turning to external space, Policy DHG7 (i) of the DaSA Local Plan normally requires private rear garden spaces of at least 10m in length. Excluding the 5m wide badger/biodiversity habitat area which is to be created across the northern part of the site, each of the dwellings would be provided with a rear garden of some 12.5m in length, which meets this requirement.

- 9.5.5 The provision of appropriately located cycle stores and refuse & recycling storage and collection point facilities can be secured by condition. The cycles sheds shown on the submitted drawings are not approved as they would be located within the badger/biodiversity habitat area.

- 9.5.6 Policy DHG4 of the DaSA Local Plan requires all new dwellings to be built in accordance with Part M4(2) – Accessible and Adaptable Dwellings – of the Building Regulations. Policy DRM1 requires all new dwellings to achieve water consumption of no more than 110 litres per person per day. Both these requirements can be secured by condition.

9.6 Highway matters

- 9.6.1 Policies TR3 and CO6 (ii) of the Core Strategy seek to ensure adequate and safe access arrangements and avoid prejudice to road and/or pedestrian safety.

- 9.6.2 Access to the site would be as previously approved (i.e. via a new shared vehicular access from Seabourne Road). It would be some 6m wide, which well exceeds the minimum shared access width of 4.5m specified in the Highway Authority's *Minor Planning Application Guidance*.
- 9.6.3 With regard to car parking provision, Policy TR4 (i) of the Core Strategy requires the residual needs of the development for off-street car parking to be met having taken into consideration localised circumstances and having full regard to the potential for access by means other than the car, and to any safety, congestion or amenity impacts of a reliance on parking off-site whether on-street or off-street.
- 9.6.4 Having regard to the *Minor Planning Application Guidance*, 1 or 2-bedroom dwellings should generally be provided with one car parking space and 3 or 4-bedroom dwellings should generally be provided with two spaces. In this case three 2/3-bedroom dwellings are proposed and a total of 6 spaces (two per dwelling) would be provided. This is as per the previously approved scheme and would satisfy the car parking requirements for the development.
- 9.6.5 For the above reasons there is no objection to the proposal on highway grounds.
- 9.7 Drainage
- 9.7.1 This is a publicly sewered area with both foul and surface water sewers present. With regard to the disposal of foul sewage there is a presumption in favour of connection to the public sewer. This means of foul sewage disposal is proposed for the development, which is acceptable.
- 9.7.2 The application form and Site Plan indicate that surface water would be disposed of by soakaways. These are not approved, as no information/evidence has been provided to demonstrate that soakaways would provide effective disposal of surface water, including from both the dwellings and large area of hardstanding. As such, a pre-commencement condition is necessary in order to resolve this issue before the development commences.
- 9.8 Other matters
- 9.8.1 Restrictions on 'permitted development' rights (e.g. relating to enlargement of the dwellings, erection of outbuildings etc.) are considered to be necessary to safeguard the amenities of neighbouring properties, preserve the visual amenities of the area, retain appropriate outdoor amenity space for occupiers of the dwellings, and to protect habitats and species identified in the ecological surveys from adverse impacts post-development. These can be secured by condition.
- 9.8.2 Concern has been raised about damage being caused to neighbouring properties during the construction period. Ultimately, the developer and/or landowner would be responsible for any damage caused to neighbouring properties.
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10.0 PLANNING BALANCE AND CONCLUSION

- 10.1 The proposal is a resubmission of a previously approved scheme, which was extant at the time of submission.
- 10.2 Having regard to the issues of ecology and in particular the impacts upon protected species, the Council has carefully considered the Government guidance *Protected species and development: advice for local planning authorities (How to assess a planning application when there are protected species on or near a proposed development site)*. It is concluded that there is a likelihood for a licence to be granted. Any changes to the design and layout etc. of the development which may arise from the licencing regime, would need to be subject to consideration under a new planning application.
- 10.3 It is a sustainable residential development, which will have an acceptable impact on the environment, including wildlife, and will make a positive contribution to the District's housing supply. Planning permission should be granted, subject to a legal agreement to secure an off-site receptor site for the existing reptile population, and subject to appropriate conditions.

RECOMMENDATION: GRANT (FULL PLANNING) DELEGATED (SUBJECT TO A SECTION 106 LEGAL AGREEMENT TO SECURE AN OFF-SITE RECEPTOR SITE FOR THE EXISTING REPTILE POPULATION)

CONDITIONS:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: In accordance with section 91 of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).
2. The development hereby permitted shall be carried out in accordance with the following approved plan, drawings and document:
Site Location Plan, dated 08 Dec 2020.
Drawing no. 5901/100/B (PROPOSED DWELLINGS – SITE PLAN), dated DEC 20 (NB the new soakaways, proposed cycle sheds, proposed boundary treatment and proposed soft landscape works are not approved).
Drawing no. 1420-P-02C (PROPOSED PLAN AND ELEVATIONS), dated 14-02-14 (NB the sheds are not approved).
Drawing no. 1420-P-03C (PROPOSED FIRST FLOOR PLAN, SITE PLAN AND SECTION), dated 14-02-14 (NB the sheds are not approved).
Reason: For the avoidance of doubt and in the interests of proper planning.
3. No development shall commence, including any ground works or works of demolition, until the Local Planning Authority has been provided with either:
 - a) a Badger Mitigation Licence, which relates to the development granted by this planning permission, issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017; or

- b) a statement in writing from Natural England to the effect that it does not consider a Badger Mitigation Licence is required for the development granted by this planning permission.

Reason: A pre-commencement condition is required to ensure the existing badger population is conserved through appropriate mitigation/compensation measures, in accordance with Policy EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii) of the Development and Site Allocations Local Plan 2019.

- 4. No development shall commence, including any ground works or works of demolition, until an ecological design strategy (EDS) addressing the rescue and translocation of reptiles 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.

Reason: A pre-commencement condition is required to ensure the existing reptile population is conserved through appropriate mitigation/compensation measures, in accordance with Policy EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii & iii) of the Development and Site Allocations Local Plan 2019.

- 5. No development shall commence, including any ground works or works of demolition, until a 5m wide badger/biodiversity habitat area has been created across the northern part of the site, in accordance with details (including a scale plan identifying the area) which have first been submitted to and approved in writing by the Local Planning Authority. The approved badger/biodiversity habitat area shall thereafter be retained and maintained in perpetuity as an undeveloped area.

Reason: A pre-commencement condition is required to ensure the existing badger population is conserved through appropriate mitigation/compensation measures, in accordance with Policy EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii & iii) of the Development and Site Allocations Local Plan 2019.

- 6. A landscape and ecological management plan (LEMP) for the 5m wide badger/biodiversity habitat area shall be submitted to and 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 plans 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.

Reason: A pre-commencement condition is required as biological communities are constantly changing and require positive management to maintain their conservation value. The implementation of a LEMP will ensure the long term management of habitats, species and other biodiversity features, in accordance with Policy EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii & iii) of the Development and Site Allocations Local Plan 2019.

7. No development shall commence, including any ground works or works of demolition, until a badger corridor has been created along the western boundary of the site, in accordance with details (including a scale plan identifying the corridor) which have first been submitted to and approved in writing by the Local Planning Authority. The approved badger corridor shall thereafter be retained and maintained in perpetuity as an undeveloped area.
Reason: A pre-commencement condition is required to ensure the existing badger population is conserved through appropriate mitigation/compensation measures, in accordance with Policy EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii & iii) of the Development and Site Allocations Local Plan 2019.
8. No development shall commence, including any ground works or works of demolition, until details of the following have been submitted to and approved in writing by the Local Planning Authority (LPA), and the development shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing by the LPA:
 - a) badger proofing barriers (including a plan indicating the positions of the badger proofing barriers).
 - b) timetable for installing the badger proofing barriers.
 Reason: To prevent badgers being displaced into, and excavating under, neighbouring properties, in accordance with Policy OSS4 (ii) of the Rother Local Plan Core Strategy 2014.
9. No development shall commence until a scheme for the provision of surface water drainage works to serve the development has been submitted to and

approved in writing by the Local Planning Authority, and the dwellings shall not be occupied until the drainage works to serve the development have been provided in accordance with the approved details.

Reason: A pre-commencement condition is required to ensure the satisfactory drainage of the site and to prevent water pollution, in accordance with Policies SRM2 and EN7 of the Rother Local Plan Core Strategy 2014, and Policy DEN5 of the Development and Site Allocations Local Plan 2019.

10. No development above ground level shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority, and the development shall thereafter be carried out in accordance with the approved details:

- a) manufacturer's/supplier's specifications of external facing materials.
- b) manufacturer's/supplier's specifications of hard-surfacing materials.
- c) boundary treatment (including a plan indicating the positions, design, height, materials and type of boundary treatment to be erected).
- d) measures to enhance the site for biodiversity.

Reason: To preserve the visual amenities of the area and to enhance the site for biodiversity, in accordance with Policies OSS4 (iii) and EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (iii) of the Development and Site Allocations Local Plan 2019.

11. No development above ground level shall take place until a scheme of soft landscape works has been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. Details shall include: Planting plans. Written specifications (including cultivation and other operations associated with plant and grass establishment). Schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate.

Reason: To preserve the visual amenities of the area and to enhance the site for biodiversity, in accordance with Policies OSS4 (iii) and EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (iii) of the Development and Site Allocations Local Plan 2019.

12. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To preserve the visual amenities of the area and to enhance the site for biodiversity, in accordance with Policies OSS4 (iii) and EN5 (ix) of the Rother Local Plan Core Strategy 2014 and Policy DEN4 (iii) of the Development and Site Allocations Local Plan 2019.

13. The dwellings shall be constructed in accordance with Part M4(2) (Accessible and Adaptable Dwellings) of Schedule 1 of the Building Regulations 2010 (as amended) for access to and use of buildings.

Reason: To ensure an acceptable standard of access to the dwellings is provided, in accordance with Policy OSS4 (i) of the Rother Local Plan Core Strategy 2014, and Policy DHG4 of the Development and Site Allocations Local Plan 2019.

14. The dwellings shall not be occupied until evidence has been submitted to and approved in writing by the Local Planning Authority to demonstrate that they have been constructed to achieve water consumption of no more than 110 litres/person/day water efficiency as set out in Part G of Schedule 1 of the Building Regulations 2010 (as amended) for water usage.
Reason: To ensure the dwelling is water efficient, in accordance with Policy SRM2 (v) of the Rother Local Plan Core Strategy 2014, and Policy DRM1 of the Development and Site Allocations Local Plan 2019.
15. No dwelling shall be occupied until a means of vehicular access has been constructed in accordance with the approved drawings.
Reason: To ensure adequate safe access arrangements, in accordance with Policies CO6 (ii) and TR3 of the Rother Local Plan Core Strategy 2014.
16. No dwelling shall be occupied until car parking and turning areas have been provided in accordance with the approved drawings. The car parking and turning areas shall thereafter be kept available for the parking and turning of motor vehicles and for no other purpose.
Reason: To ensure there is adequate off-street car parking provision and in the interests of highway safety, in accordance with Policies CO6 (ii), TR3 and TR4 (i & iii) of the Rother Local Plan Core Strategy 2014, and Policy DHG7 (ii) of the Development and Site Allocations Local Plan 2019.
17. No dwelling shall be occupied until secure cycle stores have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle stores shall thereafter be kept available for the parking of bicycles and for no other purpose.
Reason: To ensure there is adequate cycle parking provision, and to preserve the visual amenities of the area, in accordance with Policy OSS4 (i & iii) of the Rother Local Plan Core Strategy 2014, and Policy DHG7 (ii) of the Development and Site Allocations Local Plan 2019.
18. No dwelling shall be occupied until refuse and recycling storage and collection point facilities have been provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage and collection point facilities shall thereafter be kept available for the storage and collection of refuse and recycling and for no other purpose.
Reason: To ensure there is adequate refuse and recycling storage and collection point facilities, and to preserve the visual amenities of the area, in accordance with Policy OSS4 (i & iii) of the Rother Local Plan Core Strategy 2014, and Policy DHG7 (iii) of the Development and Site Allocations Local Plan 2019.
19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), no enlargement of any part of a dwelling shall be carried out without a planning permission granted by the Local Planning Authority.
Reason: To safeguard the amenities of neighbouring properties, preserve the visual amenities of the area, retain appropriate outdoor amenity space for occupiers of the dwellings, and to protect habitats and species identified in the ecological surveys from adverse impacts post-development, in accordance with Policies OSS4 (i, ii & iii) and EN5 (ix) of the Rother Local Plan Core

20. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification), no garages, building, structure or erection of any kind (including wall, fences or other means of enclosure not permitted as part of this development) shall be erected, and no caravan or mobile home shall be kept or stationed on the land, without a planning permission granted by the Local Planning Authority.
Reason: To safeguard the amenities of neighbouring properties, retain appropriate outdoor amenity space for occupiers of the dwellings, and to protect habitats and species identified in the ecological surveys from adverse impacts post-development, in accordance with Policies OSS4 (i & ii) and EN5 (ix) of the Rother Local Plan Core Strategy 2014, and Policy DEN4 (ii) of the Development and Site Allocations Local Plan 2019.

NOTES:

1. The development is subject to the Community Infrastructure Levy (CIL). Full details will be set out in the CIL Liability Notice which will be issued in conjunction with this decision. All interested parties are referred to <http://www.rother.gov.uk/CIL> for further information and the charging schedule.
2. The developer and/or landowner is advised that the site has the potential to support breeding birds. Under Section 1 of the Wildlife and Countryside Act 1981 (as amended), wild birds are protected from being killed, injured or captured, while their nests and eggs are protected from being damaged, destroyed or taken. In order to avoid disturbance to nesting birds, any demolition of buildings or removal of scrub/trees that could provide nesting habitat should be carried out outside the breeding season (generally March to August). If this is not reasonably practicable within the timescales, a nesting bird check should be carried out prior to any demolition/clearance works by an appropriately trained, qualified and experienced ecologist, and if any nesting birds are found, advice should be sought on appropriate mitigation.
3. The developer and/or landowner is reminded that it is an offence to damage or destroy protected species under separate legislation. The granting of planning permission for a development does not provide a defence against prosecution under wildlife protection legislation.
4. The developer and/or landowner is advised that any proposed works on or abutting the existing highway will require a Section 184 Licence with the County Council, prior to the commencement of works. Details of construction, surface water drainage, gradients and potential traffic management requirements can all be discussed with East Sussex County Council through the Section 184 Licence process. Any temporary access would also be subject to the Section 184 Licence process prior to any commencement of work.
5. The developer and/or landowner is advised that a formal application for connection to the public sewerage system is required in order to service this development. Please read Southern Water's New Connections Services

Charging Arrangements document, which is available at <https://beta.southernwater.co.uk/developing-building/connection-charging-arrangements>.

6. The development will be subject to the requirements of the Building Regulations, and advice should be sought from the East Sussex Building Control Partnership. No work should be carried out until any necessary permission has been obtained.
7. The developer and/or landowner should take all relevant precautions to minimise the potential for disturbance to adjoining occupiers from noise and dust during the construction period. This should include not working outside the hours of 8am to 6pm Monday to Friday, 8am to 1pm on Saturdays, and no such work should take place on Sundays or Public Holidays.

NATIONAL PLANNING POLICY FRAMEWORK: In accordance with the requirements of the National Planning Policy Framework (paragraph 38) and with the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.