The Planning Inspectorate

Appeal Decision

Site visit made on 5 September 2023

by J Moore BA (Hons) BPl MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2023

Appeal Ref: APP/Z3825/W/22/3306347
Arundene Orchard, Loxwood Road, Rudgwick RH12 3BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs A Leahy against the decision of Horsham District Council.
- The application Ref DC/21/1716, dated 22 July 2021, was refused by notice dated 14 April 2022.
- The development proposed is construction of detached dwelling with detached double garage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the appeal form indicates that the description of development has not changed, it is different to that stated on the planning application form. Neither of the main parties has provided confirmation that a revised description of development has been agreed. I have therefore used the one given on the planning application form.

3. The Council consulted on an emerging local plan (ELP) in 2020: *Horsham District Local Plan 2019-36 Public Consultation (Regulation 18), February 2020.* From the evidence before me, there are a significant volume of objections to the ELP that remain unresolved. A Regulation 19 version has not been published for consultation. I therefore cannot be certain that these policies are in their final form. In accordance with the National Planning Policy Framework (the Framework), I attach little weight to the policies of the ELP.

4. The appellants' final comments included further documents, which indicated a material change in circumstances. These documents included updated evidence regarding the Council's Annual Monitoring Report, and a document published by the Council: *Facilitating Appropriate Development, October 2022* (FAD). Both documents are clearly material to the case before me, and the Council was given an opportunity to comment on these matters. I am satisfied that no party has been prejudiced in this regard. The Council advises that the FAD document is planning guidance, and it has not been formally adopted as a Supplementary Planning Document. Therefore, it does not form part of the development plan.

5. The appellants submitted an appeal decision[1] after the prescribed time period for evidence. In my judgement, it is materially relevant, and I therefore

[1] APP/Z3825/W/22/3303603

accepted it as late evidence. I am satisfied that no party has been prejudiced in this regard.

6. A Water Neutrality Report (WNR) was submitted with the planning application (Rev P2) and an updated WNR (Rev P4) was submitted with the appeal. Third parties made representations regarding the content of the WNR and upon the issue of water neutrality during the determination phase, and to the appeal. During the appeal, a further updated WNR (Rev P5) was submitted during the appeal, together with an Existing Fittings Survey (EFS). Annex M of the *Procedural Guide Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

7. Having regard to the 'Wheatcroft Principles'[2] and the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)*, I consider that the updated WNRs and EFS result in a substantial or fundamental change to result in a different application. Third parties would be unfairly prejudiced if I were to accept the further reports. Therefore, I have determined the appeal on the basis of the application that was before the council when it made its decision and on which parties were consulted.

Main Issues

8. The main issues are:

   - whether the site is an appropriate location for new housing, with particular regard to the accessibility of necessary services and facilities; and
   - the effect of the proposed development on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar Site (The Arun Valley Sites), with particular regard to water neutrality.

Reasons

Location

9. Taken together, Policies 2, 3, 4 & 26 of the Horsham District Planning Framework 2015 (HDPF) seek to focus development within the main settlements of the district, with other growth in accordance with a settlement hierarchy. The priority is to locate appropriate development within built-up areas, with a focus on brownfield land. Policy 4 allows for some growth outside of built-up areas subject to certain criteria. Policy 26 seeks to protect the rural character and undeveloped nature of the countryside against inappropriate development.

10. The rationale for this approach is to maintain the district's unique rural character and to ensure that the needs of the community are met through sustainable growth and suitable access to services and local employment. Although the restrictive nature of these locational policies would not be entirely consistent with the Framework, they seek to actively manage patterns of growth in accordance with a spatial strategy to achieve sustainable development.

[2] Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]; Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin).

11. Policy RNP1 of the Rudgwick Neighbourhood Plan 2020-2031 (June 2021) (RNP) states that outside of defined built-up areas, new residential development will only be supported on allocated sites or where they accord with the residential exception policies in the development plan. The RNP does not include allocations for residential development. However, it seeks to guide any residential development that does take place over the plan period through the spatial strategy.

12. The appeal site forms part of the large garden of its host, Arundene Orchard. The site is located outside of any defined built-up area or settlement boundary. When judged against the locational policies of the development plan, the proposed development would not be in a suitable location for housing.

13. The appellants contend that the appeal site is within a hamlet of Tismans Common. However, from my observations, the area of Tismans Common includes other dispersed properties and small clusters of properties within the open countryside. Although the proposal would not result in an isolated home within the countryside, it would nonetheless be in a location at the bottom of the spatial hierarchy as set out within the HDPF.

14. The FAD document sets out the Council's interim approach to development proposals pending progress on the ELP and seeks to ensure that the overall spatial strategy of the HDPF is maintained. The approach set out in Policy 4 of the HDPF has been amended to remove a requirement for sites outside built-up areas to be allocated within a local plan or neighbourhood plan.

15. Paragraph 79 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. It goes on to state that where there are groups of smaller settlements, development in one village may support services in a village nearby. An additional household would be of limited support to the facilities and services of nearby villages.

16. The appeal site is about 1.1km from Bucks Green and about 2.3 km from Rudgwick. Together, the built-up areas of Rudgwick and Bucks Green are classified as a medium village under Policy 3 of the HDPF. Such villages have a moderate level of services and facilities with some access to public transport and they provide for day-to-day basic needs. Local services and facilities at Rudgwick include a small village centre with a convenience store, primary school, and pharmacy, while Bucks Green has a much more limited range. Nevertheless, collectively, they provide for day-to-day basic needs.

17. The private road at which the appeal site is located serves a small number of properties in residential use, together with some business uses including plant nurseries, a building company, a horse transportation company, and an on-line retailer. Such businesses and services are not commensurate with the provision of basic day to day needs.

18. The appeal site is not served by any public transport, and the closest bus stop would be at Bucks Green. There is no public footpath along this section of Loxwood Road until about 0.8km to the north, from where future occupiers could walk or cycle to Rudgwick Village Centre. Such a route would be without street lighting. The appellants advise that an alternative route via Hornshill Lane would be safer, due to less traffic but would be slightly longer. This route has little street lighting and does not include a full footway.

19. There is no compelling evidence before me to demonstrate that the business community at Tismans Common needs local people to work for them, nor to demonstrate that such persons would need to be located within the immediate vicinity. Therefore, it is not essential that the proposed development is located within the countryside.

20. Consequently, I find that future occupiers would be largely reliant upon private vehicles to meet most of their day-to-day needs and access necessary services and facilities.

21. In reaching this finding, I have taken account of case law[3] cited by the appellants regarding isolated homes in the countryside; the numerous appeal decisions[4], council decisions and case studies referenced by the main parties.

22. In so far as they relate to this main issue, the decisions demonstrate consistency in terms of the application of development plan policies regarding spatial strategy and settlement hierarchy and the application of the Framework. The decisions also demonstrate a range of factors that are taken into account which include not only the distance to nearby settlements, but also other factors such as the nature of services and facilities within nearby settlements, the nature of routes to those settlements, and the availability and proximity of public transport. In general terms, I consider my approach above to be consistent with these decisions, having due regard to the evidence before me regarding such factors and my own observations. However, decisions made prior to the 2021 version of the Framework are not directly comparable in terms of national policy.

23. I therefore conclude that the proposed development is not in an appropriate location for development. It would have poor accessibility for future occupiers to access the necessary services and facilities, which would necessitate a greater reliance upon less sustainable forms of travel.

24. The proposed development conflicts with Policies 2, 3, 4 & 26 of the HDPF, whose objectives I have set out above. The proposed development would not accord with the aims and objectives of the Framework in managing patterns of growth to promote sustainable travel. It would also conflict with paragraph 79 of the Framework which seeks to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities.

The Arun Valley Sites

25. The appeal site is located within the Sussex North Water Supply Zone (the zone), which includes supplies from groundwater abstraction. The River Arun and its floodplain contain habitats and species of international importance, recognised within the Arun Valley Sites. Natural England (NE) cannot with certainty conclude that water abstraction within the zone is not having an adverse effect on the integrity of the Arun Valley Sites. NE advises that further developments within the zone must not add to existing impacts, and that one way of achieving this is to demonstrate water neutrality. NE advises that plans and projects affecting sites where an existing adverse effect is known will be

[3] Bramshill v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320; and Braintree District Council v Secretary of State for Communities and Local Government and Ors [2018] EWCA Civ 610

[4] APP/Z3825/W/22/3303603; APP/Z3825/W/22/3313987; APP/Z3825/W/22/3303126; APP/Z3825/W/22/3295552.

required to demonstrate, with sufficient certainty, that they will not contribute further to an existing adverse effect.

26. The proposed development would result in additional water demand from the construction process and from future occupiers. This is likely to have an adverse effect on the Arun Valley Sites.

27. Although the Council's appropriate assessment found that the proposal would not result in an adverse effect subject to the mitigation measures in the WNR, this was subject to comments from NE, who object to the proposal on the basis that there are deficits in the baseline calculations, occupancy rate assumptions, and the certainty of mitigation and offsetting strategies. I find no reason to disagree. Furthermore, the appellants also acknowledge that the relevant methodology has changed since the time of submission.

28. Consequently, it has not been demonstrated with certainty that the proposal as submitted will not contribute further to the existing adverse effect on the integrity of the Arun Valley Sites. Given the objection by NE and in light of my statutory duties in regard to this main issue, I am not content to leave this matter to a condition.

29. I am therefore unable to conclude that the proposal would not have an adverse effect upon the integrity of the Arun Valley Sites. The proposed development conflicts with Policy 31 of the HDPF, Paragraphs 179 and 180 of the Framework and the Conservation of Habitats and Species Regulations 2017 (as amended), and section 40 of the Natural Environment and Rural Communities Act 2006.

Other Matters

30. There is no dispute between the main parties that the Council cannot demonstrate a five-year supply of deliverable housing sites. In such circumstances, paragraph 11d) of the Framework is engaged, whereby the policies which are most important for determining the application are deemed to be out of date. The proposal would contribute the shortfall in housing supply, and it would support the Framework's objective to significantly boost the supply of land for homes.

31. The planning application form indicates that the proposed development would be market housing and the description of development as submitted does not explicitly reference a self-build dwelling. However, the Design and Access Statement sets out that the proposal would be a self-build project. I note the absence of a specific policy for self-build homes in the HDPF, and that the ELP seeks to address this matter. In any event, a self-build project would be supported by the Framework and also by Policy 16 of the HDPF which addresses housing mix. Given the appellants' uncontested evidence on the performance of the Council in regard to self-build and custom build housing, such a project would weigh in favour of the proposal. However, there is no robust mechanism before me to provide the legal certainty that the proposed dwelling would be self-build if the appeal were to succeed.

32. The appeal site would form previously developed land (PDL). In reaching this view I have taken account of the definition of PDL within the Framework, and the case law[5] submitted by the appellants. As such it would be generally

[5] Dartford Borough Council v The Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 141

supported by Policies 2 and 33 of the HDPF and also the Framework which seeks to encourage the effective use of land. Other benefits could arise from the proposal from sustainable construction in terms of tacking climate change. As a small site, it could be built out quickly, and contribute to the supply of land for homes.

33. The dwelling is proposed as a 'Lifetime Home' in order to provide a retirement home for the present occupiers of the host property. Under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, I have had due regard to the impact of the proposal in relation to this matter. I am therefore required to balance the harm I find against the purpose of the proposal. The purpose of the proposal would be a positive consideration, in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. However, it has not been shown that the scheme before me is the only way of achieving the accommodation sought. Therefore, from the details before me, the harm I have identified does not outweigh those benefits. I conclude that it would be proportionate and necessary to dismiss the appeal.

Conclusion

34. For the reasons above, the proposal conflicts with the development plan when read as a whole.

35. I am unable to conclude that the proposal would not adversely affect the integrity of the Arun Valley Sites. Such sites are afforded protection as areas of particular importance in the Framework by virtue of footnote 7. In these circumstances, this forms a clear reason for refusing the proposed development, in accordance with paragraph 11d) i of the Framework. Therefore, the appeal is dismissed.

J Moore

INSPECTOR