Planning Inspectorate

Appeal Decision

Site visit made on 15 July 2025

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2025

Appeal Ref: APP/Z3825/W/25/3360134
Butlers, Tower Hill, Horsham, West Sussex RH13 0AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Mr Danny McGee against the decision of Horsham District Council.
- The application Ref is DC/24/1086.
- The development proposed is outline application for the erection of 3no single storey dwellings with all matters reserved.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was submitted in outline form with all matters reserved at this stage. As a result, I have treated the proposed site plan and house design as indicative only.

Main Issues

3. The main issues are:

   - whether the proposal would be a suitable location for housing having regard to the Council's spatial strategy;
   - the effect of the proposal on the character and appearance of the area; and
   - the effect of the proposal on protected species and biodiversity.

Reasons

Location

4. The appeal site is located outside of the settlement boundary of Horsham and is therefore in the countryside as defined in the Horsham District Planning Framework (HDPF)[1]. The site is accessed from Two Mile Ash Road which has a rural appearance with no footpath, hedgerows and grass verges lining either side of the road with a small number of modest properties facing and adjoining the road.

5. Policy 4 of the HDPF supports settlement expansion outside of built up areas provided the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement edge. The appeal site does not adjoin a settlement

[1] Adopted in November 2015

boundary, nor is it an allocated site. As such the proposal would conflict with Policy 4.

6. Policy 26 of the HDPF is a strategic policy which seeks to protect the countryside. It details that outside built up area boundaries, the rural character and undeveloped nature of the countryside will be protected, and proposals must be essential to their countryside location and meet at least one of four criteria. Whilst the appellant considers that the scheme would be compliant with criterion four, i.e. the sustainable development of a rural area, it has not been demonstrated that it is essential to its countryside location. Accordingly, the proposal would be contrary to this policy.

7. Reference is made to the appeal site being in a sustainable location due to its proximity to Horsham and there being a bus service to the town. Given that the appeal site is 350m from the settlement boundary and there is a nearby bus stop providing a service to Horsham, future occupants of the proposed dwellings would have reasonably good access to facilities. However, poor pedestrian access would weigh against the proposal. This is because the facilities in Horsham are towards the centre of the settlement and some distance from the appeal site, and the walk to Worthing Road that leads to Horsham, would be partly along Tower Hill, a narrow unlit lane with steep sides and no footpath. This route would therefore be dangerous for pedestrians and cyclists given that vehicles would be travelling up to 40mph close to vehicles.

8. Policy 2 of the HDPF encourages the effective use of land by reusing Previously Developed Land (PDL) provided that suitable access to services and local employment is provided. Given the appeal site constitutes PDL and the dwellings would have reasonably good access to facilities, I consider the location of the appeal site to be well related to the settlement of Horsham and would therefore comply with the aims of this policy.

9. My attention has been drawn to planning application DC/22/2250 which refers to development of a dwelling on PDL. In this case the proposal was deemed to be an unsuitable location for a dwelling, despite being 0.2km from the built up area. However, the planning balance deemed that the benefits of the scheme weighed in favour of allowing the development. Given that the main issues in this example differ to the appeal scheme, the example is not wholly comparable to the development before me and would therefore not justify a planning permission.

10. Reference is made to recent decisions which have granted residential development outside of defined built up areas[2]. These examples illustrate that given the lack of a five year housing supply, the presumption in favour of sustainable development applies. This is acknowledged and is addressed in the planning balance.

11. In advance of the production of a new Local Plan, the Council has produced a Facilitating Appropriate Development[3] (FAD) document relevant to the provision of new homes. The document sets out that given that the Council is unable to demonstrate a five year housing supply, the Council recognises that it is likely to receive applications outside of defined settlement boundaries. Given this position, the FAD details that it will positively consider applications that meet five criteria.

[2] DC//22/0495, DC22/2250 and DC/23/2278
[3] Adopted 19th October 2022

Notwithstanding that the appellant accepts that the proposal fails to adhere to the first criteria, i.e. that the site adjoins the existing settlement edge; reference is made to the Southwater Housing Needs Assessment. This document identifies a need for homes that would be suitable for young families and the elderly. Given that the proposal would provide three family homes, the scheme would positively contribute to local housing needs.

12. For the above reasons, whilst the proposal would positively contribute to local housing needs and provide reasonably good access to facilities in compliance with Policy 2 of the HDPF, it would be contrary to Policies 3, 4 and 26 of the HDPF. Collectively, these policies seek to support growth in existing settlements and restrict development in the countryside, to protect its rural character and undeveloped nature.

Character and Appearance

13. The appeal site is located on Two Mile Ash Road which is characterised by large, detached dwellings in spacious plots, modest detached properties within moderate plots and pairs of semi-detached cottages in smaller plots. Dwellings tend to be positioned behind established hedgerows or small gardens. This results in the road having a rural verdant character, which positively contributes to the character and appearance of the area.

14. Given there are varied plot sizes along Two Mile Ash Road, and the proposed dwellings would have a commensurate plot size to others, the proposal would be in keeping with the existing pattern of development. In addition, the indicative plans illustrate that trees and vegetation could be retained to maintain the verdant rural appearance of the road.

15. For the reasons above, the proposal would have an acceptable effect on the character and appearance of the area. The development is therefore compliant with Policies 25, 32 and 33 of the HDPF. Amongst other things these policies require high quality design and development to protect, conserve and enhance landscape and townscape character.

Protected species and biodiversity

Protected Species

16. The appeal site is part of the extended garden serving the main dwelling and comprises a significant area of grassland, tennis court, coniferous plantations, mature and semi mature trees and a non-native hedge.

17. The submitted Preliminary Ecological Assessment (PEA) identifies that five ponds are located within 500m of the site, there are 30 records of Great Crested Newt (GCN) within 2.0km of the appeal site, and four mitigation licences relating to GCNs have been granted within the same area. As a result, the PEA recommends that an initial Habitat Suitability Assessment and then, if deemed necessary, an Environmental DNA survey of the pond within 35m of the site is carried out.

18. The PEA also identifies the potential presence of roosting bats within four of the trees on site, and details that three mitigation licenses have been granted relating to different species of bats within 2.0km of the appeal site. As a result, it suggests that if the trees are likely to be impacted by the proposed development, further

assessment of these trees for the potential presence of roosting bats should be conducted.

19. The Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) identifies GCN and bats as European Protected Species (EPS). Regulation 9(3) of the Habitats regulations requires a competent authority to have regard to the requirements of the associated Directive so far as it may be affected by the exercise of its functions. This includes any proposal that might lead to the deterioration or destruction of the breeding sites and resting places of EPS under Article 12(1)116. This includes bats and the places that they roost, irrespective of whether or not they are present at the time the development is carried out.

20. Given the evidence of licensable activities in the area, the request for additional surveys and assessments appears to be reasonable and necessary. Moreover, the presence or absence of protected species and the extent to which they could be affected by the proposed development should be established before planning permission is granted. Accordingly, it would not be appropriate to require further surveys via planning condition.

Biodiversity

21. Paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) requires grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective is met. The condition is deemed to apply to every planning permission granted for the development of land in England, unless exemptions or transitional provisions apply.

22. One of these exemptions refers to self-build and custom build development comprising of no more than nine dwellings. Whilst the appellant sets out the proposed dwellings would be self-build properties on the application form and appeal statement, the description of development does not refer to self-build, a self-build exemption claim form has not been submitted, and the appellant has not demonstrated that they are on the self-build register. Additionally, there is no mechanism to ensure that the proposal would be constructed or used in this manner. A s106 obligation is the most appropriate method of ensuring that the development is self or custom build housing rather than market housing.

23. Considering the above and because the application has not been accompanied by the minimum information set out in Article 7(1A) of the Town and Country Planning (Development Management Procedure) (England) Order, it has not been demonstrated that the proposal would provide self-build properties or the required Biodiversity Net Gain (BNG). In addition, it has not been demonstrated that the proposal would result in the enhancement of existing biodiversity required by Policy 31 of the HDPF.

24. For the reasons above, I am not satisfied that the extent to which protected species may be affected by the proposed development has been satisfactorily addressed. In addition, it has not been demonstrated that the development proposes self-build properties, that it enhances biodiversity or results in the required BNG. Accordingly, notwithstanding that Natural England has not been consulted, it has not been demonstrated that the proposed development would not have a harmful effect on protected species and biodiversity. On this basis, there would be conflict with the nature conservation aims and requirement to contribute

to the enhancement of existing biodiversity detailed in Policy 31 of HDPF. The proposal would also be contrary to paragraph 193a of the Framework.

Planning Balance

25. The extent to which protected species may be affected by the proposal have not been satisfactorily addressed and the proposal would not contribute to the enhancement of existing biodiversity. Substantial weight is afforded to this conflict with the development plan.

26. The Council concedes that it is unable to demonstrate a five-year supply of deliverable housing sites. The Annual Monitoring Report for the period 1st April 2023- 31st March 2024 details a supply of one year, which represents a severe shortfall. Paragraph 11 d) of the Framework states that in these circumstances, the policies which are most important for determining the application should be deemed out-of-date. Permission should therefore be granted unless i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

27. In addition to the harm identified above, I attach limited weight to the conflict with Policies 3, 4 and 26 which seek to protect the countryside and restrict development outside of built up area boundaries. This is because the substantial housing shortfall indicates that the current boundaries are out of date but the aim for housing to be located within settlements aligns with the Framework.

28. Whilst the proposal would have an acceptable impact on the character and appearance of the area, the absence of harm is a neutral factor and does not weigh in favour of the proposal.

29. The proposal would provide three dwellings in the district and positively contribute to local housing needs. This would make an important contribution to meeting the housing requirement for the area as indicated by paragraph 73 of the Framework, particularly given that the Council concedes it is unable to demonstrate a five-year supply of deliverable housing sites, and the shortfall is substantial.

30. Taking the above into account, I consider that the potential impact on EPS, failure to enhance biodiversity, deliver BNG and the limited harm in relation to the suitability of the site for housing, would significantly and demonstrably outweigh the stated benefits when assessed against the policies in the Framework when taken as a whole.

Conclusion

31. The proposal conflicts with the development plan and material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal is dismissed.

V Goldberg

INSPECTOR