
Appeal Decision

Hearing held on 27 and 28 September 2016

Site visit made on 28 September 2016

by Kenneth Stone BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 November 2016

Appeal Ref: APP/Z3825/W/16/3145622

Land to the east of Tuggles Plat, Warnham, West Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Michael Stephens (Castle Land and Development (Southern) LLP) against the decision of Horsham District Council.
 - The application Ref DC/15/2680, dated 25 November 2015, was refused by notice dated 4 February 2016.
 - The development proposed is described as 'Outline application for the development of 0.85 Hectares of land with up to 14 dwellings (up to 3 (20%) affordable houses) with vehicular, cycle and pedestrian access from Tuggles Plat'.
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Decision

1. The appeal is dismissed.

Preliminary matters and Background

2. The application the subject of this appeal was submitted in outline with all matters reserved. Various illustrative plans were submitted including a block plan, site layout, cross section and street scene however these were for illustrative purposes and did not form part of the scheme before me. It was agreed with the parties that in terms of the plans that formed the application it was only the red line plan. I also had a site survey plan that provided level contours of the existing site.
 3. I conducted a hearing in respect of appeal APP/Z3825/W/16/3146231 for a site at Smock Alley in the same Local Authority area for a residential development on behalf of the same appellant, although the appellant company was named differently, (Castle Land and Development LLP), in the week before I conducted this hearing. Whilst much of the information before me was similar I have considered this appeal on the basis of the information submitted in respect of this appeal as I am required to do. The issues related to five year housing land supply and interpretation of the Council's spatial strategy are common themes and are matters on which I have reached similar conclusions.
 4. I have considered the appeal on the basis of the above.
 5. The Council refused planning permission for three reasons, in broad terms these related to; firstly, the Council's spatial strategy; secondly, the effect on the open rural character of the area and its contribution to the setting of
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- Warhnam Conservation Area (WCA) and various listed buildings in Friday Street; and thirdly, the effect of the development on infrastructure requirements arising from the development, including affordable housing.
6. Before the hearing I was provided with a Statement of Common Ground which confirmed that the matters in respect of infrastructure requirements would be addressed by the completion of a Unilateral Undertaking (UU) the wording of which had been agreed by the parties. This final reason for refusal was therefore no longer a matter in dispute between the parties. I received a signed and dated Unilateral Undertaking (dated 23 September 2016) before the start of the hearing. On this basis the Council confirmed at the start of the hearing that it no longer raised objection to the scheme on the basis of the effect on the infrastructure requirements of the scheme as these matters were secured through the UU.
 7. The Statement of Common Ground highlighted that if the Council could not demonstrate that it had a five year supply of deliverable housing sites policies for the supply of housing would not be up to date, paragraph 49 of the National Planning Policy Framework (the Framework).
 8. The Development Plan for the area comprises the Horsham District Planning Framework (HDPF). This plan was adopted very recently, in November 2015, following on from an Inspector's report concluding the plan was sound, dated October 2015. The plan's base date is 2011 and in broad terms the document provides for an Objectively Assessed Housing Need (OAHN) of 650 dwellings per annum, with a further 150 units per annum added to produce an overall requirement of 800 dwellings per annum, to include Horsham's duty to co-operate and address some of the shortfall from Crawley.
 9. The appellant confirmed that they did not seek to question the OAHN or overall requirement level in the HDPF but suggested that an adjusted requirement level should be used against which to calculate the 5 year housing land supply. In effect it was suggested that in the previous periods covered by previous development plans a shortfall was identifiable and this should be added to the HDPF requirement to get an adjusted requirement. The previous plans included the Horsham District Core Strategy, adopted 2007, which had a base date of 2001; and the South East Regional Strategy 2009, which had a base date of 2006 and which was revoked in 2015. The appellant calculated that there was a cumulative shortfall over the period 2001 – 2011 of 1, 475 dwellings which should be added to the HDPF requirement figure. They also sought to argue that a 20% buffer figure was appropriate due to persistent under supply, I shall return to that matter below.
 10. The Council have a recently adopted sound development plan including an OAHN which is not directly challenged by the appellant. The OAHN would need to consider the housing needs of the area as at the base date of the plan, 2011. In effect this draws a line under the previous housing provision of the Council, in terms of requirements, as the Objectively Assessed Need should consider the pressures for housing in the area at that time and identify a figure representing that need. In effect if there has been any under provision in previous years this would be accounted for in the latent need that would be identified in this process. Adding additional under supply from previous periods would result in double counting the effect of that undersupply driving need as that would be caught within the overall need assessment. On this basis I do

not think it appropriate to add the historic undersupply beyond the base date of the existing plan to the requirement of the plan.

11. That is not to say there may not have been undersupply from the base date of the plan from 2011 to the current date 2016 which would need to be addressed and it would be right to add this level of under supply to the plans requirement. The historic undersupply is however relevant in relation to the issue of the buffer.
12. The Council's Mid-year Update – May 2016 Chapter 3 Housing identifies a shortfall since 2011 of 775 dwellings and with the latest figures the parties provided evidence which demonstrates that this has reduced to 363 dwellings. On this basis the requirement against which to measure the 5 year housing land supply is 4, 363 plus a buffer.
13. Moving to the issue of the buffer, the appellant suggests the Council has a persistent record of under delivery and thereby suggests that a 20% buffer would be appropriate. This would raise the requirement figure to approximately 5, 236.
14. I agree with the appellant that given the latest figures available it is appropriate to assess the 5 year period as 2016-2021. The appellant's evidence points out that in the Council's mid-Year review the total available supply for the period 2016-2021 is 5, 479. This would therefore exceed the requirement even with the 20% buffer. The appellant however suggests that a number of supply site figures should be deleted these include 300 units from the Land North of Horsham and a further 158 dwellings from neighbourhood plans should be discounted. This would reduce the supply figure to 5,021, which would not exceed the requirement plus a 20% buffer. Furthermore if one removes all of the windfall allowances, 250 over a 5 year period, the supply figure falls further below the 5 years plus a 20 % buffer, to 4,771 leaving a shortfall of 465 dwellings.
15. Whilst I return to the issue of windfall below for a more complete assessment and discussion, at this point I do not accept that it is appropriate to delete the windfall allowance.
16. The recent figures for housing completions have demonstrated an increasing supply of housing and more recently substantially in excess of the yearly requirement. This has been so for the past three years and is increasingly so. In effect this is a demonstration of the HDPF fulfilling its planned outcomes. The early years of shortfall can be ascribed to the retro-fitting of the requirement figure at a time when the plan was not yet adopted. Whilst historically there are periods of under supply particularly from 2007 to 12/13 this covered the period of the recession and poor economic conditions and at a time with a different development plan. I am of the view that the Council presently is not under supplying housing and therefore, whilst there may have been an historic under supply there is presently not; it cannot therefore be said the Council is presently persistently under providing, I am therefore of the view that a 5 % buffer would be more appropriate.
17. Given my conclusions above the Council would have a requirement plus a 5% buffer of approximately 4,582 dwellings. The supply side, minus those sites identified by the appellant of 458 dwellings, would give a supply of 5, 021 dwellings and therefore the Council can comfortably demonstrate a 5 year

supply, even taking account of all of the deletions put forward by the appellant. On this basis policies for the supply of housing in the HDPF are up to date.

Main Issues

18. Following on from above, and in the context of there being a five year housing land supply, the main issues in this appeal are:

- Whether the proposals comply with the spatial strategy set out in the HDPF, considering the extent to which policies for the supply of housing are up-to-date;
- The effect of the proposals on nearby heritage assets including the setting of listed buildings in Friday Street and the Warnham Conservation Area; and
- The effect of the proposals on the landscape character and appearance of the area.

Reasons

Spatial Strategy

19. Policy 2 in the HDPF sets out the Council's overall spatial strategy which amongst other matters is to focus development in and around the key settlement of Horsham and allow for growth in the rest of the district in accordance with the settlement hierarchy. Policy 3 allows for development within built up areas and sets out the settlement hierarchy and Policy 4 allows for settlement expansion through the allocation of sites in the Local Plan or neighbourhood plans and subject to other criteria. As paragraph 4.6 of the supporting text makes clear the HDPF seeks to ensure development takes place in a manner that ensures the settlement pattern and rural landscape character of the district is retained and enhanced. The intention is clearly expressed that the mechanism by which this will be achieved is through the designation of built-up area boundaries and the planned expansion of existing settlements through the Local Plan or Neighbourhood Planning.
20. Paragraph 4.8 further emphasises the strategy noting that the priority will be to locate appropriate development, including infilling, redevelopment and conversion within built-up area boundaries, with a focus on brownfield land. Paragraph 4.9 then directly addresses settlement expansion and is clear that this should be done through the allocation of sites in the Local Plan or Neighbourhood Plans.
21. Policy 15 sets out the strategic housing provision that will be required across the plan period and the various sources from which this will be delivered. This includes, amongst other matters, the strategic sites; sites allocated through Neighbourhood Plans; and windfall developments. This housing provision policy is in effect an identification of numbers and sources not an allocation policy and development would need to come forward in accordance with the spatial strategy set out under policies 2, 3 and 4.
22. I see no conflict or tension between the policies and indeed the interpretation that the Council put forward, that housing should come forward within the built-up areas or through allocated or strategic sites is a logical construction of the policies. Whilst Policy 15 includes an identification of windfall development as a source for the provision of housing it does not say how or where this

should come forward and indeed the definition of windfall is a simple statement that any development not allocated would be treated as windfall. This does not provide it with any special policy position or added support, simply that there is a number of such developments that it is acknowledged will be forthcoming to meet the expected housing provision over the plan period.

23. Windfall developments are required to meet the spatial strategy requirements however, through the wording of policy 4, these would be precluded outside the built up areas as in such locations they would need to be identified in the Local Plan or a Neighbourhood Plan and therefore would fall outside the definition of windfall. Such an approach is wholly consistent with the proper interpretation of policy 4 as it is written and it is not for me to re-write the policy.
24. I do appreciate that with this interpretation that windfall development could only come forward in other circumstances, including within the built up area, under countryside Policy 26, under permitted development or under prior approval processes for agricultural conversions etc as explained by the Council. I do not accept that in this context the Policy 15 provision for 750 dwellings over the plan period, equating to 50 dwellings per annum, is significantly undermined. There are a number of settlements within the settlement hierarchy with settlement boundaries that could accommodate such development plus the authority has demonstrated a significant number of windfall developments historically. It is reasonable to conclude that the Policy 15 source of windfall developments could still be achieved with the aforementioned inter-relationship in the policy position. I accept that there is no direct policy that appears to deal with windfall development per se and that may have made the situation clearer, but it is not a necessity to make the spatial strategy workable or coherent. In this regard I disagree with the conclusions of my colleague on a previous appeal¹, for the reasons given above.
25. The proposed development clearly sits outside the settlement boundary of Warnham. The site is not allocated in the Local Plan or in a Neighbourhood Plan. The proposal therefore conflicts with policy 4, as it is outside the built-up area boundary and not an allocated site in one of the documents listed, and is not supported by Policy 3 as this relates to development within the built up area boundary. The proposal therefore conflicts with the spatial strategy outlined in Policy 2.
26. Policy 26 in the HDPF does allow for appropriate development in the countryside provided that it is essential to its countryside location and in addition can be seen to meet one of various criteria. A housing development of the nature proposed does not fit with any of the criteria identified and is not essential to its countryside location. The proposal would therefore also conflict with Policy 26.
27. I am aware that there is on-going work on a Warnham Neighbourhood Plan, including a site assessment. However this is at a very early stage in the process and whilst some public input has gone into the assessment there has been no publication or testing of the information and conclusions. On this basis I can afford this very little weight.

¹ APP/Z3825/W/15/3022944

28. For the reasons given above I conclude that the proposal would not comply with the spatial strategy set out in the HDPF, the proposal therefore conflicts with policy 2, 3 and 4 of the HDPF. As the Council can demonstrate a Five Year Housing Land Supply and the policies for the supply of housing are up to date in a recently adopted plan I give this conflict substantial weight.

Setting of Heritage assets

29. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting the decision maker shall have special regard to the desirability of preserving the listed building or its setting. The Council also drew my attention to the statutory duty under section 72(1) of that act in the context on the Warnham Conservation Area. However the development is not within the conservation area and therefore that duty is not directly engaged.
30. The Framework at section 12 provides advice on conserving and enhancing the historic environment. Paragraph 126 advises that it should be recognised that heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. Paragraph 129 advises that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset. Paragraph 132 goes on to advise that great weight should be given to heritage assets' conservation and that significance can be harmed through development within the heritage asset's setting.
31. The Framework defines Heritage Assets as including Designated Heritage Assets and which include Listed Buildings and Conservation Areas. It also defines the setting of heritage assets as the surroundings in which a heritage asset is experienced. Both parties agree that there are a number of Listed Buildings fronting Friday Street and that these are Designated Heritage Assets. Furthermore it is agreed that the site abuts, in part, the Warnham Conservation Area, which is also a Designated Heritage Asset and includes these listed buildings. The parties further accept that the appeal site is closely located in relation to these Designated Heritage Assets and as such is potentially within their setting. The appellant suggests that in terms of the listed buildings where the site would be within their setting would be Rose and Bank Cottages, and Apple Tree Cottage. But that many would not have the site within their setting including 58, 60 and 64, due to the intervening road; Greets Inn and No 49, due to its car park and grounds; and No's 37 and 39, due to another residential curtilage in the intervening space.
32. My determination is therefore made taking account of the statutory and policy tests related to the effect on the setting of the listed buildings and conservation area and the extent to which it affects their significance.
33. There are a number of individual buildings listed for their architectural and historical qualities as well as buildings listed for group value. The details are set out in the list descriptions which have been provided by both parties.
34. The conservation area does not have a statement of its significance but in general this is derived from the accumulation of listed buildings and the historic core of this part of the village and its historical development.

35. Whilst I accept that there may not remain direct linkages between the adjoining listed buildings and the appeal site or evidence of a functional relationship in terms of use, the field provides setting for the village edge in its broadest sense. I also accept that there may be restricted access and views to the site at present but as the Framework notes in the glossary in referring to the setting of heritage assets that its extent is not fixed and may change as the asset and its surroundings evolve. I therefore conclude that the site is within the setting of all the listed buildings to a greater or lesser extent.
36. I was able to have glimpsed views of the site while walking along Friday Street and there were views of the site from Gardeners Close. These view-points are within or across the conservation area and include listed buildings within the field of view dependant on the view point. The age design and detail of the listed buildings contributes to an historic village core, which also forms the core of the conservation area. The small intimate village settlement with its tight urban grain is set against the closely related rural hinterland and this provides a significant counterpoint. The close proximity of the rural fields and wider countryside contributes to the setting of the village centre conservation area and the listed buildings, which can be viewed as part of the historical development of this small rural village.
37. The proposed development, although in outline would result in a relatively dense urban form of development, given the limited size of the site and number of units proposed. This development would change totally the character and appearance of the existing field and, in effect, extend the settlement boundary into the open countryside. The further expansion of the village would detract from the original historic form of the village core and the buildings which form it, much of which has already been lost to the north side of Friday Street. The further urbanisation of this small village settlement at this point would further isolate the area from its rural hinterland and confuse and obscure the original setting for this part of the village and the listed buildings.
38. The damage would be less than substantial in the context of the Framework but this does not equate to a less than substantial planning objection and I give this considerable importance and weight.
39. Paragraph 134 of the Framework requires that I balance any harm against the public benefits of the scheme. In this regard the proposal would provide for additional housing, including affordable housing, would also include economic benefits in terms of additional population construction work and new homes bonus and additional population to support the local community assets. However, I have also found that the proposal conflicts with the spatial strategy and is outside the defined settlement boundary and that the Council has an adequate supply of housing. Overall therefore I am satisfied that the benefits of the scheme would not outweigh the less than substantial harm to the heritage assets. On this basis the scheme also conflicts with policy 34 of the HDPF which seeks to protect heritage assets.

Landscape character

40. The Statement of common Ground draws my attention to two landscape assessment documents. Firstly, the Horsham District Landscape Character Assessment, 2003 (Landscape Character Assessment) prepared in order to inform policy choices regarding the location of development in the Core

Strategy 2007. Secondly, the Horsham District Landscape Capacity Assessment, 2014 (Landscape Capacity Assessment), prepared in order to inform policy choices regarding the location of development in the HDPF.

41. The landscape Character Assessment identifies the site within K2 – Warnham and Faygate Vale character area. The Statement of Common Ground confirms that the parties agree that the application would not, in principle, breach the planning and land management guidelines for this area.
42. The site is identified as falling within area WN2 in the Landscape Capacity Assessment which defines the site as being of moderate to high landscape sensitivity but with a low-moderate landscape value, giving and overall low to moderate landscape capacity. The definitions explain this would mean the area only has limited potential to be able to accommodate development in limited locations without unacceptable landscape and visual impacts or compromising the values attached to it, taking account of any appropriate mitigation.
43. Policy 25 in the HDPF seek to protect the natural environment and landscape form and character of the district, including the landscape, landform and development pattern, together with protected landscapes. In this context the site is not identified as a protected landscape.
44. Policy 26 seeks to protect the rural character and undeveloped nature of the countryside outside the built-up area boundaries.
45. The appeal site is presently an undeveloped pasture field that has a gently rising slope from north to south. The site is located above the properties fronting Friday Street, the rear garden boundaries of which form the built-up area boundary and settlement edge. This northern boundary of the site is delineated with fencing and shrub planting.
46. Although the site rises gently to towards the south there is a significant level difference across the site and more so from Friday Street. The Southern boundary is enclosed by a strong tree hedgerow belt with understorey growth and this forms a significant and important element in the wider landscape as well as containing closer views within the site.
47. To the west is Tuggles Plat, from which the site is separated by boundary fencing and shrub planting. While to the east the site is contained by further tree hedgerow and shrub landscaping.
48. The site is generally contained by the landscaping, tree and hedgerow and residential development surrounding. Whilst glimpsed views of the site are available within the village it is the higher tree line and landscaping that are the important aspects that create the back drop and sense of rural containment. The trees and landscaping on the boundaries of the site would be retained within the scheme and the proposals include the provision of a landscape buffer strip around the site, a minimum of 5m in width. The buffer would be outside any residential curtilage and a management plan could be implemented. This could be the subject of appropriate conditions.
49. The mid-views of the site from Gardeners Close, the public footpaths and the Cricket Ground, view the site across the roof tops of and between the properties in Friday Street. The view is mainly of the backdrop of the significant hedge row trees and these are to be retained. Whilst there are minor views of the pasture these are extremely limited and do not hold an

important element in the wider landscape view. Similarly in the longer views from the public footpaths the predominant landscape feature of the site that contributes to the landscape quality of the area is the dominant tree line on the southern boundary. This would be retained and indeed strengthened in the applicant's proposals.

50. Concerns were expressed that housing would intrude and dominate the tree line on the southern boundary. However, given the elevated position of the tree line, even on a rising site the proposed houses, even at two storeys, would not be higher than the trees and the trees would continue to provide an important back drop and screen for the countryside beyond the site.
51. The overall character of K2 is described as a narrow vale on Weald Clay with a medium to large field pattern of mainly arable farmland. In this context it is further stated that the traditional hedgerowed field pattern has become fragmented or lost, and only small isolated patches of woodland occur. The key issues in the Landscape Character Assessment include the progressive loss of hedgerows and tree hedgerows as well as urban development. The proposals would be contained within the existing field boundaries would retain the landform and rising ground level and would, importantly retain and supplement the southern boundary tree hedgerow. As such whilst there would be minor local adverse impacts in terms of views around the immediate proximity of the site there would not be material harm to the wider landscape or mid to longer views of the site in the wider landscape.
52. For the reasons given above I conclude that the effect of the proposals on the landscape character and appearance of the area would not result in material harm and would therefore not conflict with policy 2 and 25 of the HDPF which seek to protect the wider landscape and general rural character of the district.

Other matters

53. The appellant identified a number of social, economic and environmental benefits of the scheme that it was contended amount to the scheme being sustainable development. In this context it was put forward that the affordable housing contributed to the social role along with additional housing provision, even if it was concluded there is a five year supply of housing as this does not create a ceiling. The requirement to significantly boost housing adds weight to that conclusion. In terms of environmental benefits it was contended that the proposals would introduce biodiversity improvements, enhanced planting and buffer areas where management of the environment would be introduced. Finally, in respect of economic benefits these would flow from the construction and delivery of the scheme, the contribution of future residents to the economy, supporting services and facilities, as well as additional tax revenue and new homes bonus.
54. Whilst I accept that there are benefits of the scheme in the form of those put forward this would be true of any such development. The small number of houses proposed would not substantially add to the community and there is a five year supply of housing. It is more appropriate in that context that any village expansion is put forward in the context of the Local Plan or Neighbourhood Plan.

Overall conclusions

55. Paragraph 12 of the Framework makes it clear that the Framework does not change the statutory status of the Development Plan and advises that proposed development that conflicts with an up-to-date plan should be refused unless other material considerations indicate otherwise. Proposals are not sustainable development if they conflict with an up to date plan and there are no material considerations of sufficient weight to indicate the decision should be otherwise. I have identified that the scheme would conflict with the spatial strategy in the HDPF and would conflict with policies 2, 3, and 4. I have also concluded that the scheme would result in harm to heritage assets, the scheme would thereby also be contrary to policy 34. The Development Plan is up-to-date and addresses the issues at the heart of this proposal. The conflict with the plan is of significant weight and would result in development that would have a significant adverse environmental impact. The proposal would also result in less than substantial harm to heritage assets and I give this considerable importance and weight. This harm would not be outweighed by other material considerations, including the benefits of the scheme, and on this basis the proposal would not be sustainable development and should not be supported.
56. For the reasons given above I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graeme Keen	Barrister
Paul Collins BA(Hons) DIPTP MRTPI	Phoenix Planning Consultancy
Stephen Dale	ACD Environmental Ltd
Jo Evans	RPS CGMS
Michael Stephens	Castle Land and Development

FOR THE LOCAL PLANNING AUTHORITY:

Jason Hawkes	Senior Planning Officer Horsham District Council
Mike Eastham	Senior Planning Officer, Strategic Planning Horsham District Council
Ines Watson	Landscape Architect Horsham District Council
Kathryn Sayner	Conservation Officer Horsham District Council

INTERESTED PERSONS:

Tony Maughan	Local Resident
Dr R F Smith	Council for the Protection of Rural England (Sussex)
William Sorrell	Local Resident
Roger Purcell	Warnham Parish Council, Chairman Planning Committee
Paul Robinson	Local Resident
David Hurst	Local Resident

DOCUMENTS

- 1 List of Council's conditions with appellant's comments submitted by the Council.
- 2 Updated housing completion data submitted by the Council.
- 3 High Court Decision Zurich Assurance Ltd v Winchester City Council and South Downs National Park Authority [2014] EWHC 758 (Admin).
- 4 Secretary of State Decision APP/L3815/A/14/2223343 on Land south of Loxwood Farm Place, High Street, Loxwood, Billingshurst, West Sussex.

- 5 Tables of Historical Housing Targets and Delivery Data for Horsham District submitted by the appellant.
- 6 Appeal decision APP/Z3825/W/16/3146083 on land adjacent to Hatches House, east Street, West Chiltington, West Sussex submitted by the Council.
- 7 Appeal Decision APP/z3825/A/12/2176793 referred to by the Council but copy provided by the appellant, there is already a copy in evidence.
- 8 Map of Warnham Conservation Area on which Cider Mill Farm was marked, submitted by Council.