
Appeal Decision

Site visit made on 17 January 2017

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 27 January 2017

Appeal Ref: APP/D3830/W/16/3158215

Buxshalls, Ardingly Road, Lindfield, West Sussex RH16 2QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Hanover Housing against the decision of Mid Sussex District Council.
 - The application Ref DM/15/4715, dated 24 November 2015, was refused by notice dated 18 March 2016.
 - The application sought planning permission for demolition of 21 existing dwellings for over-55's; erection of 33 new dwellings for over-55's plus 1 staff flat; change of use and remodelling of Buxshalls House from 21-bed nursing home to provide 6 apartments for over-55's; landscape and associated car parking without complying with a condition attached to planning permission Ref 14/01120/FUL, dated 23 June 2014.
 - The condition in dispute is No 22 which states that: The apartments hereby approved (other than the one staff flat) shall be occupied only by persons 55 years of age or over.
 - The reason given for the condition is: To ensure the retention of the retirement apartments hereby approved and to accord with Policy H7 of the Mid Sussex Local Plan.
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Decision

1. I allow the appeal and grant planning permission for demolition of 21 existing dwellings for over-55's; erection of 33 new dwellings plus 1 staff flat; change of use and remodelling of Buxshalls House from 21-bed nursing home to provide 6 apartments; landscape and associated car parking at Buxshalls, Ardingly Road, Lindfield, West Sussex RH16 2QY in accordance with the application Ref DM/15/4715, dated 24 November 2015, without compliance with condition number 22) previously imposed on planning permission Ref 14/01120/FUL, dated 23 June 2014 but subject to the conditions on the attached schedule.

Main Issue

2. This is whether condition number 22) satisfies the tests in the National Planning Policy Framework, together with the effect of removing the condition on the supply of housing for elderly people.

Reasons

3. Paragraph 203 of the Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Paragraph 204 sets out the tests that conditions should be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably
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related in scale and kind to the development. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects as stated in paragraph 206.

4. The web-based Planning Practice Guidance provides further detail including reference to a table of considerations against each of the tests. Paragraph: 015 Reference ID: 21a-015-20140306 addresses the question '*is it appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people?*', with the answer that there may be exceptional occasions where granting planning permission for development that would not normally be permitted on the site could be justified on planning grounds because of who would benefit from the permission. In the present case the condition limits the benefit of the permission, that is to say who may live here, to households over 55 years old.
5. Whilst it is the case that the refusal stems from the elected members not agreeing the Officer's recommendation to permit the change, the Officer's Report gives the background information that the over 55's restriction on the previous application did not decisively tip the balance in support of the scheme, and expresses the view that neither should the removal of the over 55's use decisively tip the balance in favour of rejecting the scheme.
6. That view is clearly not agreed by the local residents as well as parish councils and businesses making representation on the matter. Concern is expressed at increases in traffic on the shared drive, noise and amenity among other matters, through there being a likelihood of younger people. However those concerns are not supported in the reasons for refusal and the isolated nature of the site and the distance to other occupiers militate against real planning harm occurring. The highway authority had been consulted on the proposed change and found it acceptable. The Council's present housing land supply situation also adds weight to the balance in favour of the development proceeding as now proposed when considered against these concerns.
7. The principle of development of the site and its built form has been established by the grant of permission in June 2014 and this permission remains extant and would remain able to be developed regardless of the outcome of this Appeal; all physical parts of the development could be built.
8. From the information available it is not possible to say that the condition was necessary in order to make the development acceptable in planning terms. There is a clear connection between the appellant requesting development for the over 55s, and the Council including this as a condition, since the description of development is not, alone, a fully enforceable statement of what may be developed. However, whilst the condition ensured that the developer's then proposal was delivered, there is no policy backing for such a restriction.
9. Looking at the precision of the condition, another of the tests in the Framework and Guidance, the reference to Mid Sussex Local Plan Policy H7 appears incorrect as that only refers to sheltered housing, which is not the case here. The reason for refusal introduces reference to Policy H2 which states that new housing developments shall include a mix of dwelling types, sizes and affordability and shall ensure that efficient use is made of land. Proposals should take account of the local housing needs among other matters. Whilst small houses are referred to there is no specific reference to age restrictions.

10. The Lindfield and Lindfield Rural Neighbourhood Plan was 'made' in March 2016, and Policy 1 states that only development proposals within the built up area boundaries of Lindfield and Scaynes Hill, as shown on the Proposals Map, will be supported and the re-use of previously-developed sites will be encouraged, provided that the development is appropriate in scale, massing, and character, and that the proposals for development have had due regard to the policies contained elsewhere in this Plan and the Local Development Plan.
11. However, the ability to develop the site with the age-restriction and to an identical physical effect is a significant material consideration and the lifting of that restriction would not be contrary to Development Plan policies, including those of the Neighbourhood Plan. The fact remains that the site is in an area of development constraint as set out in the Mid Sussex Local Plan and the Neighbourhood Plan but the material considerations that allowed the Council to permit the age-restricted scheme do not change significantly were the restriction to be lifted.
12. The Council refers to the 2015 Housing and Economic Development Needs Assessment and the need for accommodation for elderly households. However, the lack of a five year supply of housing land means that there is likely to be a need for all types of housing, the precise level of need not yet having been tested as part of the Plan making process. The fact would remain that people over 55 years of age could live here.
13. Weight should attach to the likelihood of development actually proceeding, and hence the second part of the reason for refusal refers to viability. It appears that changes to the housing benefit regime and Local Housing Allowance caps result in the scheme not being considered viable by the appellant for development by them. It is clear that retaining the age requirement lowers the residual value of the site by some 49% below a figure that is already lower than the site value benchmark of refurbishing the existing property.
14. Although the original age-restricted scheme is shown by the Council to result in the same 20% profit, that is a reasonable input to the calculation rather than a result and would be on a lower sales figure and hence a lower cash profit. The Council's assertion that land costs should not be an input is correct but would not result in development proceeding. That would result in the risk of the land remaining underused, the supply of housing not being addressed and the existing buildings on the site appearing unkempt and detrimental to the character and appearance of the area.

Undertaking and Conditions

15. The second reason for refusal concerned the lack of contribution towards infrastructure in order to satisfy the requirements of policies G3 and R4 of the Mid Sussex Local Plan, and to mitigate the effect on the Ashdown Forest Special Protection Area and Special Area of Conservation as required by the Conservation and Habitats and Species Regulations 2010, Policy C5 of the Mid Sussex Local Plan and Paragraph 118 of the NPPF. The infrastructure requirement has now been overcome by the signing of an Undertaking dated 13 December 2016.
16. With regard to the Ashdown Forest, the Inspector is the competent authority, and it is necessary to embark on the 7 steps of a habitats assessment as set out in Circular 06/2005, *'Biodiversity and Geological Conservation - Statutory*

Obligations and Their Impact within The Planning System' (August 2005). Step 1 does not apply, and Step 2 appears to have been answered positively with Step 3 having been carried out. However, the adverse effects identified can be mitigated as set out in Step 3, and the submission of the Undertaking and contributions to Strategic Access Management and Monitoring, and Suitable Alternative Natural Greenspace, also supported by new condition 14), means that there is no need to look further at the habitats assessment.

17. The new permission omitting condition 22) with its age-restriction would sit alongside the extant 2014 permission and the web-based Planning Practice Guidance states that to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 new conditions may also be imposed, provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.
18. The Council has supplied a list of suggested conditions and clarified that the time limit for commencement of the development should be the same as the original grant of permission, that being 23rd June 2017. The suggested additional condition 23) on fire hydrants has been agreed with the appellant and appears necessary and reasonable. The original condition on the Code for Sustainable Homes has been replaced with a new condition 13). It is considered that the remaining and new conditions are necessary and reasonable and meet the tests in the Framework and the Guidance.

Conclusions

19. There is no policy backing for the age restriction placed on the original grant of permission through condition 22) and on the evidence available it is not possible to conclude that the condition was necessary to make the development acceptable at the time. As a result the development is acceptable without the condition. Whilst not conclusive in view of this finding, the viability appraisal indicates that the age-restricted scheme would be unlikely to be attractive to develop, risking the site remaining in its derelict and unattractive state, and failing to assist in the supply of housing in a District that is unable to show a five year supply of land.
20. For the reasons given above it is concluded that the appeal should succeed. A new planning permission is granted without the disputed condition 22) and restating those undisputed conditions together with the additional conditions as agreed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before 23rd June 2017.
- 2) No development shall be carried out unless and until samples of materials and finishes to be used for external walls, roofs and windows of the proposed buildings have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out only in accordance with the approved samples.
- 3) No development shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority full details of both hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of development (as given in BS 5837:2012) and these works shall be carried out as approved.
- 4) No development shall take place until details of proposed screen walls, fences and hedges have been submitted to and approved in writing by the Local Planning Authority and no dwellings shall be occupied until such screen walls, fences and hedges associated with them have been erected or planted.
- 5) The development hereby permitted shall not proceed until details of the proposed surface water drainage and means of disposal have been submitted to and approved in writing by the Local Planning Authority and no building shall be occupied until all drainage works have been carried out in accordance with such details as approved by the Local Planning Authority. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development should be in accordance with the approved details.
- 6) No development shall take place within the site until the applicant, or the applicant's agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation and timetable which has been submitted and approved in writing by the Local Planning Authority.
- 7) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,
 - the anticipated number, frequency and types of vehicles used during construction,
 - the method of access and routing of vehicles during construction,
 - the parking of vehicles by site operatives and visitors,
 - the loading and unloading of plant, materials and waste,

- the storage of plant and materials used in construction of the development,
- the erection and maintenance of security hoarding,
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),
- measures to control the emission of dust and dirt during demolition and construction, lighting for construction and security,
- details of public engagement both prior to and during construction works.

- 8) No development shall commence until such time as revised plans and details incorporating the recommendations given in the Stage 1 Road Safety Audit and accepted in the Designers Response have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. For clarity, these details shall include the re-siting of the existing post box to a position outside of the visibility splay and the provision of length of footway and dropped pedestrian crossing points across the B2028 to link to the southbound bus stop.
- 9) Demolition/Construction work shall not commence until a scheme for the protection of the existing neighbouring properties from dust has been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be operated at all times during the demolition/construction phases of the development.
- 10) a) Submission of Remediation Scheme
A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
b) Implementation of Approved Remediation Scheme
The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.
c) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 10)a), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 10)b).

- 11) No development shall proceed unless and until 1:20 scale detailed section and elevation drawings showing a typical brick and timber clad frontage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in full accordance with the approved drawings.
- 12) Notwithstanding any information submitted to the contrary, no development shall proceed unless and until revised drawings have been submitted to and approved in writing by the Local Planning Authority that address the following areas of design:

- Windows / window groupings serving flat types C and D
- Balustrades
- Front recessed bay of the Cedar Courtyard buildings
- Entrance porches serving house L
- Projecting bay serving flat type K

The development shall be carried out in full accordance with the approved drawings.

- 13) No development shall take place unless and until full details of the sustainable measures that are to be incorporated into the proposal have been submitted to and approved in writing by the Local Planning Authority. The development shall only proceed in accordance with the approved details.
- 14) No development shall take place until a scheme for the mitigation of the effects of the development on the Ashdown Forest Special Protection Area (SPA) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall either make provision for the delivery of a bespoke Suitable Alternative Natural Greenspace (SANG) or make provision for the payment of an appropriate financial sum towards the maintenance and operation of a SANG leased and operated by the Local Planning Authority. In the event that the scheme approved by the Local Planning Authority is for the physical provision of a SANG, no dwelling shall be occupied before written confirmation has been obtained from the Local Planning Authority that the SANG has been provided in accordance with the approved scheme. In the event that the scheme approved by the Local Planning Authority does not relate to the physical provision of a SANG, no development shall take place before written confirmation has been obtained from the Local Planning Authority that

the financial sum has been provided in accordance with the approved scheme.

- 15) Hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. 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 unless the Local Planning Authority gives written consent to any variation.
- 16) No work for the implementation of the development hereby permitted shall be undertaken on the site on Bank or Public Holidays or at any other time except between the hours of 0800 and 1800 on Mondays to Fridays and between 0900 and 1300 Saturdays.
- 17) Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent shall be limited to the following hours: 0800 to 1800 on Mondays to Fridays, 0900 to 1300 on Saturdays. On Sundays and Bank/Public Holidays no work is permitted.
- 18) No burning of demolition/construction waste materials shall take place on site.
- 19) No part of the development shall be first occupied until such time as the vehicular access has been constructed in accordance with plans and details submitted to and approved in writing by the Local Planning Authority.
- 20) No part of the development shall be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.
- 21) No dwellings, hereby approved, shall be occupied until covered secure cycle parking spaces have been provided in accordance with the approved plans. These spaces shall thereafter be retained for their designated use.
- 22) The proposed units shall not be occupied unless and until passing places have been constructed along the access road in accordance with plans to be submitted to and approved in writing by the Local Planning Authority.
- 23) No dwelling shall be occupied until fire hydrants have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.