
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/16/3156154

Ethlinden, Hophurst Hill, Crawley Down, West Sussex RH10 4LP

- 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 S Bilby against the decision of Mid Sussex District Council.
 - The application Ref DM/16/0485, dated 2 February 2016, was refused by notice dated 30 March 2016.
 - The development proposed is 6 bedroom, 3 storey detached dwelling.
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Decision

1. I dismiss the appeal.

Preliminary Matters

2. The Council had refused permission due to the lack of mitigation of the potential impact on the Ashdown Forest Special Protection Area and Special Area of Conservation, contrary to the Conservation and Habitats and Species Regulations 2010, Policy C5 of the Mid Sussex Local Plan, Policy DP15 of the Mid Sussex District Plan 2014-2031 Pre Submission Draft and Paragraph 118 of the National Planning Policy Framework. The Council withdrew this reason for refusal by e-mail to the Planning Inspectorate dated 7 December 2016 to the effect that a satisfactory planning obligation was completed on 6 December 2016. Since the impact of the proposed development on the Ashdown Forest Special Protection Area will be satisfactorily mitigated, no further consideration of a Habitats Regulation Assessment is required.

Main Issues

3. Having mind to the above, the remaining main issues are:
 - The effect of the development on the character and appearance of the Hophurst Hill area, including the effect on trees.
 - The effect of the development on highway safety.
 - The effect of the development on the aims of national and local policies on sustainable development.

Reasons

Policy

4. The development Plan includes the saved policies of the Mid Sussex Local Plan May 2004, and the Crawley Down Neighbourhood Plan which was 'made' on 28
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January 2016. Local Plan Policy C1 is entitled the protection of the countryside and seeks that protection for its own sake, with areas outside built-up boundaries being classified as a Countryside Area of Development Restraint. The policy then contains a restricted list of development that could be allowed, and the list does not include such as the appeal proposal. Policy C6 states that development resulting in the loss of woodlands, hedgerows and trees which are important in the landscape, or as natural habitats, or historically, will be resisted. Design is the subject of Policy B1 with a high standard being expected in new buildings, and more specific requirements on materials, space between and around buildings, and planting. Policy T4 states that with respect to sustainability requirements and traffic generation, all new development should be within the boundaries of built-up areas, unless no such site exists; not cause an unacceptable impact on the local environment in terms of road safety and increased traffic; be located close to public transport routes; and seek to minimise the increase in private car trips generated by the development.

5. The Council have referred to the Neighbourhood Plan, and Policy CDNP08 concerns the prevention of coalescence. Development outside the village boundary will only be permitted if b) it does not contribute to 'ribbon development' along the roads or paths linking the village to neighbouring settlements of Copthorne, Felbridge, Turners Hill and Crawley. Part d) on the protection of trees is highlighted from Policy CDNP09 which states that proposals for new residential, employment and retail development will be expected to protect and enhance biodiversity and wildlife. Within Policy CDNP10, sections a) and b) provide for development that has safely located vehicular and pedestrian access with adequate visibility, and can demonstrate that adequate sustainable transport links to the principal village facilities including the village centre, the primary school, Health Centre and recreation open space already exist or will be provided.
6. Emerging Policies DP10 and DP19 in the Mid Sussex District Plan Pre-Submission Draft 2014-2031 concern the protection and enhancement of the countryside and transport, and whilst a material consideration, do not appear to add greatly to the Development Plan policies which they would replace.
7. The National Planning Policy Framework sets out the Government's view on sustainable development at paragraphs 6 and 7, with the three dimensions of such development detailed. The presumption in favour of sustainable development is stated at paragraphs 11 to 16, and the delivery of housing is the subject of section 6 where paragraph 47 seeks to boost significantly the supply. If a local planning authority is unable to demonstrate a five-year supply of deliverable housing sites, paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date, and such a position would lead to consideration under paragraph 14. Paragraph 55 details the approach to housing in rural areas. Paragraph 32 is referred to by the Highway Authority and states that decisions should take account of whether a safe and suitable access to the site can be achieved for all people.

Character and Appearance

8. The first reason for refusal states in part that the proposal would have a harmful impact on the character and appearance of the area by urbanising a rural area, and would also result in severe pressure to remove established

trees. On the latter, a Tree Preservation Order was confirmed on 23 October 2015 and covers two oak trees on the frontage with Hophurst Hill, and an area of mixed deciduous and evergreen woodland along the frontage and back into the site. It is the case that the area of protected woodland is shown on the plans as being left undeveloped and protected.

9. The site is part of the existing curtilage of the house at Ethlinden, which is set just north of centre on the large plot. There are other dwellings nearby to the south, and opposite, constituting a small group of dwellings around the entry of Cuttinglye Road onto Hophurst Hill. However, the frontage does not display a strong built-up public face, rather the development appears sporadic, and the main road retains the character of a rural highway.
10. The appellant makes clear that a change was made to the location of the dwelling and the refusal notice lists the 'A' amendment drawings showing this change. The dwelling would be placed adjoining but to the rear of an existing car port that would be retained for the host dwelling, and would bring about the removal of a store that is presently located adjacent to the protected woodland area. Whilst the dwelling would share the existing entry onto the main road with the host building, a new driveway would be formed alongside the car port.
11. The existing view into the site may be only fleeting, since the Council are of the view that the road is of limited utility for walkers, but nevertheless, as stated in Policy C1, the countryside is to be protected for its own sake. The public view is of clearly ancillary rural-style buildings backed by the extensive tree canopy that remains to the west and south of the site. The location of the house at Ethlinden is less obvious, being set north of the entry and behind roadside vegetation. The result is of a discreet form of development at present, with the rural-style outbuildings being the most obvious feature, the view being restrained by the vegetated margin of the access drive.
12. The more obviously built-up, albeit sporadic, development ends at the entry to Wyndham, with The Laurels on the east side of the road being particularly prominent and the dwelling shown on the plans as Woggo being set back from the road. Further north than Wyndham the obvious presence of only the rural-style outbuildings means that the area reverts to a rural, countryside character and appearance.
13. The removal of the store building and the remodelling of the driveway, together with the formation of the high pitched roof with the two-storey house below would introduce a domestic appearance to the presently open land, which would be exposed to view from the gate and road. This and the introduction of a domestic curtilage, parking, activity and paraphernalia in replacement for only an unassuming and rural-style store, would extend and consolidate the sporadic development to the south further north along the road.
14. With regard to the Neighbourhood Plan requirement not to contribute to ribbon development along the road between Crawley Down and Felbridge, the introduction of the house would not add to the linear extent of such development, but would consolidate what is already there, making the ribbon development more evident and harmful than Ethlinden does at present.
15. As previously stated, the reason for refusal asserts the risk of future pressure to remove trees. It appears that the refusal notice was based on drawing

675/1/02 (no revision) which was not updated to show the relocation of the proposed house and hardstanding. It appears also that tree T5, an oak shown on that plan as being a 'poor tree C' has been removed. The revised location for the house and hardstanding would have no effect on the protected trees on the frontage, nor on the protected woodland area, the latter being far enough away from the house to avoid future risk, and the new curtilage would have sufficient open areas that are not subject to tree shading or risk of detritus.

16. The Council's Tree Officer commented on the original location of the house and suggested that problems would be somewhat mitigated if the dwelling were to be moved approximately 2m north, nearer the proposed boundary with Ethlinden. Clearly the view expressed then was that the problems of future pressure would not be entirely removed. At the time of the site inspection trees were not in leaf, but those to the south of the building could result in some adverse overshadowing, but there would be only a limited risk of detritus causing problems.
17. There is another tree shown to remain on the Ethlinden land, an oak that is drawn as overhanging the car port, and from observations on site, branches would either overhang the revised house location, or come close to doing so. Presumably since the Draffin Associates drawing 675/1/02 and the Report dated 15 January 2016 pre-date the 1 March 2016 revisions to the R B Design drawings, incorporating the revised dwelling location, this was not considered to be an issue. However, and again from observation on site, this proximity may give rise to concern from occupiers who could seek harmful works. However, these trees are not part of the Tree Preservation Order, but do contribute to the sylvan character and appearance of the area. In the terms of Policy C6 the trees are important in the landscape and as natural habitats.
18. Whilst the balance to be applied through paragraph 14 of the Framework in respect of Policy C1 and the five year housing land supply situation will be considered later, the aim of protecting the countryside for its own sake remains in line with the aims of the Framework, such as set out in the fifth planning principle at paragraph 17, recognising the intrinsic character and beauty of the countryside. The same applies to Policy B1 on design which includes consideration of the effect on the surroundings and space around buildings, a matter covered in paragraph 56 of the national policy statement; the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Those policies should not therefore be considered out-of-date in their entirety, only where they concern the supply of housing.
19. In conclusion, the development proposed would have a detrimental effect on the character and appearance of the Hophurst Hill area, contrary to that aspect of Local Plan Policies C1, C6 and B1, and Neighbourhood Plan policies CDNP08b) and CDNP09d), as well as to the Framework requirements on the countryside and design.

Highway Safety

20. The concern here is with regard to the use of an existing entry onto Hophurst Hill, with the addition of a second dwelling. The road past the site is subject to a 40mph speed limit and rises from a bend to the north, whereas in the other direction, travel is towards the bend and downhill. The Council have referred

to Design Manual for Roads and Bridges, but as asserted by the appellant, the Manual for Streets publications appear the more appropriate for the type and use of the road. There is no information on actual speeds in the vicinity, but from observation they do not appear to be excessive, possibly due to the topography and forward visibility at the bend to the north.

21. The concern in detail appears to be with regard to where the sightlines should be drawn. Looking to the north, the red line and blue lines on the drawing on page 5 of the July 2016 Transport Statement coincide, and there would appear to be limited likelihood of overtaking putting oncoming vehicles on the carriageway nearest the entry and within the blind spot. Even then, the blind spot reduces significantly nearer the site entry and the vehicle being overtaken would be visible throughout.
22. Looking to the south, the two lines diverge from the entry, so that a vehicle approaching would not be seen from the required 2.4m set back until significantly closer, and a narrow item such a motorbike or cycle, closer still. In the downward direction and at this distance from the bend there could be a risk of the approach being at the full speed limit. This sightline to the south is not over highway land and or land in the appellant's control, and contains the protected tree T1 so that any reduction in the bank could adversely affect the root system.
23. The Transport Statement points to the lack of a history of incidents at the existing entry and the fact that the addition of a single, albeit large 10 bed-space, dwelling would not add significantly to the use. The observation at the site inspection, when the need was to drive off the site, there being no safe place to park other than on the site, was that the entry and sightlines did not appear so sub-standard as to cause apprehension on carrying out the manoeuvre, and did not appear to require more than the usual care when using a junction for the first time. The nature of a domestic use is that for the greater part, users would be accustomed to the arrangement and would act accordingly.
24. In the balance, the arrangement of the entry onto Hophurst Hill is such that it should not cause an unacceptable impact on the local environment in terms of road safety and increased traffic, and hence would accord with Policy T4, and would have a safely located vehicular and pedestrian access with adequate, if not full, visibility, as sought in Policy CDLP10.

Sustainable Development and Planning Balance

25. The Council draw attention to an appeal Decision nearby at Cuttinglye Farm, (Ref APP/D3830/W/16/3145756, dated 1 September 2016). Whilst the appellant is correct in stating that there would be differences even with being so close, that Decision was taken on the same policy background and the main issue concerned the location of the proposed dwelling rather than, as here in addition, such matters as character and appearance, and highway safety.
26. The location of Cuttinglye Farm led to considerations under paragraph 55 of the Framework on isolated new homes in the countryside. As a matter of fact and degree, the location of the present appeal proposal is not so isolated from other dwellings, but policies of restraint still apply, subject to the paragraph 14 balance. Other findings in that previous Decision do however hold true for the present appeal, such as the location relative to the bus stop at the end of

Cuttinglye Road, the bus routes and frequencies, and in relation to facilities at Crawley Down, Felbridge and East Grinstead.

27. On the matter of accessibility, the unlit country road, with no footway until closer to the settlements in question would not be an attractive proposition for day-to-day access, and bridleways or footpaths would not be attractive in poor weather conditions, particularly at the beginning or end of a day. The bus service appears reasonable during the working day but is significantly less frequent on Sundays and in the evening.
28. As stated in that previous nearby case, sustainable development is more than just accessibility, and there is a need to consider the Framework policies taken as a whole. Paragraph 7 sets out the three dimensions of sustainable development.
- The economic role would be supported through the building work providing activity and employment and the additional dwelling would assist in sustaining local services, but as just reasoned, at the likely cost of additional car journeys and hence the possibility of use being made of services further afield. In policy terms this is not land in the right place.
 - The social role would be supported only to a limited extent due to the location and the support that residents might give to local services would be restricted, so that the support for strong, vibrant and healthy communities would also be limited.
 - With regard to the environmental role, the first main issue has identified visual harm resulting from the development, and a risk of further harm to trees. There is also harm due to the location being likely to result in natural resources not being used prudently, with vehicle journeys to facilities and a relatively high carbon footprint when considered against more accessible locations.
29. It is the fact however that the Council is not able to demonstrate a five year supply of deliverable housing land, and the second bullet point in the 'decision-taking' part of paragraph 14 of the Framework is engaged. This states; *'where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted'*. The Framework does contain policies on protecting the countryside and good design as previously cited.
30. There are benefits to the supply of housing, but limited to this being an application for a single dwelling, albeit a large one. The area is not degraded or otherwise requiring improvement that only this development can bring. The undertaking provided overcomes the second reason for refusal but as it is mitigation of otherwise adverse effects, it cannot be weighed in the balance as a benefit. The appellant sets out in section 4 of the Statement the areas where it is considered that the proposal complies with policy, and there are aspects of Plan policies that are accorded with, but the Council's objections are specific to particular sections. Attention has been drawn also to other recent development along the road between Crawley Down and Felbridge, and quite visible and sizeable built form was seen. However, the full circumstances and necessary balance of considerations would likely differ from that now required.

31. On the other side of the balance there are adverse impacts on the character and appearance of the area and to the aims of national guidance, the Local Plan together with emerging policy, and the Neighbourhood Plan, all of which seek good design and to protect the countryside, concentrating development, and housing in particular, in settlements that are sustainable locations. The development does not accord with policy at each of these levels and does not represent sustainable development, so that it is concluded that notwithstanding the lack of a five year supply of housing, the adverse impacts significantly and demonstrably outweigh the benefits.

Conclusions

32. Whilst the safety of users of the road and the entry may be considered to be reasonably assured, and the undertaking would overcome adverse effects on the Ashdown Forest, the site is within an unsustainable location and would cause harm to the aims of policies which seek good design, sustainable development and the protection of the countryside. The benefits are significantly and demonstrably outweighed by the harm. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR