

Appeal Decision

Site visit made on 30 January 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 07 March 2017

Appeal Ref: APP/D3830/W/16/3161018

89 to 93 Hammerwood Road, Ashurst Wood, West Sussex RH19 3RX

- 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 Bancroft Developments Ltd against the decision of Mid Sussex District Council.
 - The application Ref DM/16/0818, dated 21 February 2016, was refused by notice dated 15 September 2016.
 - The development proposed is the construction of 4 detached dwellings, after demolition of No 91, together with a rear extension to No 89 and access driveway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council accepts that it is currently unable to demonstrate a five-year supply of deliverable sites for housing. Policies of the Mid Sussex Local Plan 2004 (MSLP) relevant to the supply of housing are therefore not up-to-date in the context of Paragraph 49 of the National Planning Policy Framework (the Framework). Consequently, in accordance with Paragraph 14 of the Framework, planning permission should be granted unless: any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate development should be restricted.
 3. In reaching my decision I have had regard to the saved policies of the MSLP insofar as they are consistent with the Framework, and I have attributed them weight as set out in my conclusions on the main issues. I am aware that the emerging Mid Sussex District Plan 2014-2031 (MSDP) is currently at examination. The extent to which there are unresolved objections to relevant policies is not clear. I have therefore afforded the emerging policies limited weight in my consideration of this appeal, having regard to Paragraph 216 of the Framework.
 4. The Neighbourhood Planning Written Ministerial Statement (WMS) of 12 December 2016 requires that, where there are relevant policies for the supply of housing in a recently made neighbourhood plan, these policies should not be considered out-of-date unless there is a significant lack of housing supply. The Council has confirmed that it cannot currently demonstrate a three-year supply of deliverable housing sites and therefore the specific circumstances set out in the WMS do not apply. Relevant policies for the supply of housing in the Ashurst Wood Neighbourhood Plan 2016 (AWNPNP) are
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therefore also not up-to-date in the context of Paragraph 49, and I have attributed them weight as set out in my conclusions on the main issues.

5. The Council has previously granted planning permission for the demolition of No 91 Hammerwood Road and the erection of 3 detached dwellings together with a new access driveway and rear extension to No 89¹.

Main Issues

6. The main issues are the effect of the proposed development on i) the Ashdown Forest Special Protection Area (SPA) and ii) the character and appearance of the area.

Reasons

7. The site lies in the built up area of the village of Ashurst Wood, within the High Weald Area of Outstanding Natural Beauty (AONB). The area is predominantly residential in character, comprising a wide variety of mainly detached properties, many of which occupy generous gardens. Trees and hedges are a common feature, making a significant positive contribution to the local sylvan character, which extends along much of Hammerwood Road. The appeal site comprises of 89 Hammerwood Road (No 89) a two-storey detached house set in a large garden, 91 Hammerwood Road (No 91) a modest detached bungalow set in a similarly large garden, and a further garden area behind 93 Hammerwood Road (No 93).
8. It is proposed to demolish No 91 and to move the common boundary closer to No 89 to facilitate a driveway into the rear of the site where three detached houses and two detached garage buildings would be sited. A further detached house would be positioned towards the front of the site, set a little back from the road compared to the existing bungalow. A two-storey extension is also proposed to the rear of No 89. Part of the existing front hedge at No 91 would be removed to enable the access, and the tall conifer hedge between Nos 89 and 91 would also be removed.

Ashdown Forest SPA

9. The site lies within 7km of the Ashdown Forest SPA and Special Area of Conservation, designations of European significance. It is established that any development resulting in a net increase in the number of dwellings within 7km of the SPA, without avoidance measures, would be likely to have a significant effect on the SPA within the meaning of the Conservation of Habitats and Species Regulations 2010 (The Habitats Regulations). Paragraph 119 of the Framework states that the presumption in favour of sustainable development does not apply where development requiring an Appropriate Assessment under the Birds and Habitats Directives is being determined.
10. Saved Policy C5 of the MSLP does not refer to the SPA, but does state that the weight to be attached to nature conservation interests will reflect the relative significance of designations. The Ashdown Forest SPA is of local, national and European importance and it follows that great weight should be given to its nature conservation interests.

¹ Ref DM/15/3934

11. The Council has in place a Strategic Access Management and Monitoring (SAMM) Interim Mitigation Strategy 2013, and a Suitable Alternative Natural Greenspace (SANG) Strategy with associated SANG Tariff 2016. It is suggested that the identified SAMM contribution would be secured by way of a S106 planning obligation, and that bespoke SANG provision or a contribution to a SANG operated by the Council would be secured by the imposition of a negatively worded condition, in the event of the appeal being allowed. It is clear that both SAMM and SANG are required to satisfactorily mitigate the effects of the development on the SPA.
12. A completed Unilateral Undertaking has been provided in relation to the appeal, which makes provision for a financial contribution in respect of the proposed net additional dwellings, in accordance with the Interim SAMM Strategy.
13. However, the Planning Practice Guidance (PPG) sets out that a negatively-worded condition should be used only in exceptional circumstances and in the case of more complex and strategically important development. The provision of three net dwellings does not meet these requirements. On this basis, I consider that the use of such a condition in this case would not be reasonable and would conflict with the PPG. Therefore, there is no mechanism before me for securing the necessary provision of SANG.
14. Given the importance of the protection of the SPA, the regulations require me to take a precautionary approach. Even if the SANG provisions sought were appropriate and adequate, there is no mechanism by which to secure such mitigation. I therefore cannot be satisfied that there would be no likely significant effects arising from the development and that it would not adversely affect the overall integrity of the SPA.
15. I conclude that the proposal would harm the Ashdown Forest SPA. It would therefore conflict with Paragraph 118 of the Framework and saved Policy C5 of the MSLP, which is consistent with the objectives of the Framework and I have therefore afforded it significant weight.

Character and appearance

16. The three additional dwellings would be positioned towards the rear of the site, well set back from Hammerwood Road and largely screened by existing and proposed hedges, trees, and the proposed replacement house at the front of site. While the rear gardens provided would not be as deep as many in the vicinity, and they would be narrower than those previously approved, they would nonetheless provide a satisfactory amount of outdoor space for the scale of the dwellings. Furthermore, there are examples of detached properties nearby with similarly modest plot sizes, including near the junction of Hammerwood Road with Maypole Road. The proposed layout would therefore not be significantly at odds with existing development in the area.
17. Moreover, when considered against the extant planning permission, the proposed development would be similar in form and scale. Three 4-bed houses are proposed at the rear of the site, instead of two, larger, 5-bed houses. In terms of the overall scale and massing of built development, the three smaller dwellings would not be materially different to the two larger ones, and the style and design would also be very similar. In terms of the space around the buildings and the relationship with the surroundings, the proposed siting is such that the outer flank elevations of Plots 2 and 4 would be in essentially the

same position in relation to the side boundaries of the site as the approved dwellings.

18. The front and rear extent of built form would also be in essentially the same position as previously approved. While the space between the houses would be reduced compared with the approved scheme, this would be a marginal amount and in the limited views from Hammerwood Road the detached nature of the three dwellings would be apparent so Plots 2, 3 and 4 would not appear as a single mass.
19. The front garden areas of Plots 2, 3 and 4 would be small. However, the effect of this on the appearance of the area would be limited by the significant screening and set-back from the road. Additionally, the level of provision would again not be materially different to the extant scheme. The general extent of the access drive and turning areas would also be essentially the same as the approved scheme, although a modest additional area of hardstanding would be provided to serve Plot 3. However, this would not result in an over-dominance of hardstanding, and planting to either side would also soften its appearance so that there would be no significant adverse effect on the appearance of the area.
20. Plots 2 to 5 would each be provided with one garage space and at least two additional parking spaces. No 89 (Plot 1) would retain its existing drive and parking arrangements. The development would therefore make satisfactory off-street parking provision, consistent with the requirements of Policy ASW 21 of the AWNP for at least 3 garage or parking spaces for 4-bed houses. I note that the local highway authority has assessed the proposal using its Car Parking and Demand Calculator and found the scheme to provide adequate off street parking to meet the anticipated demand. Furthermore, adequate turning provision is made for a 10m vehicle, and while manoeuvring space associated with the car parking would not be generous, the plans indicate satisfactory space for the parking and turning of cars, without being significantly impeded by features such as supporting pillars. The access and layout would therefore not be unduly cramped for the scale and nature of the development proposed, including when taken against the extant scheme.
21. I consider that the development would not be unduly cramped and the extent of hard landscaping and parking provision would be satisfactory. The design, materials, character and form of the development would respect the local context, and the overriding low density, sylvan character of the area would be maintained. Furthermore, as the Council and appellant agree, there would be no significant impact on the landscape or scenic beauty of the AONB.
22. I conclude that the proposed development would not harm the character and appearance of the area. It would therefore accord with saved Policy B1 of the MSLP or Policy ASW 14 of the made AWNP, which together seek to ensure a high standard of design, construction and layout for new buildings, including by respecting the scale and character of existing and surrounding buildings. It would also accord with saved Policy H3 of the MSLP, which sets out criteria for residential development in built up areas, including by making efficient use of land, respecting the character and form of the locality, and ensuring that parking and manoeuvring provision would not significantly reduce garden areas; and saved Policy T5 of the MSLP and Policy ASW 21 of the made AWNP, which seek to ensure adequate on-site parking provision.

23. The development would also accord with Policy ASW 13 of the made AWNP, which discourages new dwellings on garden land unless the reduced garden sizes relate well to each other and the surrounding neighbourhood, and requires that the character of the neighbourhood in terms of massing and landscape value is respected. These policies are generally consistent with the Framework and I have therefore given them significant weight.
24. The Council has also referred to saved Policy B2 of the MSLP, which relates to new residential estates and is therefore not significant in relation to the proposed infill development.

Planning balance

25. The provision of three net additional homes would make a positive, albeit modest, contribution to local housing supply. The homes would also be provided in a sustainable location, close to the services and facilities available in the village, and without harm to the character and appearance of the area or the landscape and scenic beauty of the AONB. This weighs in favour of the appeal. Moreover, a significant shortfall in housing land supply is a matter to which I attach significant weight.
26. However, in exercising a precautionary approach, I have identified harm in relation to the Ashdown Forest SPA. Footnote 9 of Paragraph 14 of the Framework shows that policies related to sites protected under the Birds and Habitats Directives are included as specific policies that indicate that development should be restricted. Paragraph 119 of the Framework therefore applies in relation to the SPA, and so the presumption in favour of sustainable development does not apply in this case. The harms I have identified in relation to the SPA are therefore not outweighed by other material considerations.

Other Matters

27. I have considered the various other matters raised by interested parties, including in relation to the provision of affordable housing, highway safety, biodiversity, the relationship with neighbouring properties, and loss of trees and hedges near to an Area of Townscape Character. The Written Ministerial Statement of 28 November 2014 and the Planning Practice Guidance (PPG) set out that planning obligations relating to the provision of affordable housing and tariff-style contributions towards infrastructure should not be sought in relation to small-scale developments of ten units or less. The local highway authority has raised no objection to the proposals and there is no significant evidence before me that it would be harmful to highway safety.
28. There would be reasonable separation from neighbouring properties and the relationship of the proposal with nearby properties would not be materially different from the previously permitted scheme. The site is not within an Area of Townscape Character and, while I accept that some existing hedges would be removed, it is clear from the submitted plans that replacement planting, including hedging, is intended. A detailed landscaping scheme could have been secured by condition in the event that the appeal had been allowed.
29. I also note the concerns that the scheme could set a precedent for similar development to be repeated elsewhere. However, there is no significant evidence before me that this scenario is especially likely to occur in this

locality, or indeed that the cumulative effect of a number of such developments would necessarily be harmful to the character and appearance of the area. Furthermore, I must determine the appeal on the basis of the proposal and evidence before me, and any subsequent application or appeal must also be considered on its own merits.

30. I conclude that none of the matters discussed in this section add materially to the case for or against the appeal.

Conclusion

31. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR