
Appeal Decision

Site visit made on 10 January 2017

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 15th May 2017

Appeal Ref: APP/D3830/W/16/3158782

Challoners, Cuckfield Road, Ansty RH17 5AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Copperwood Developments against Mid Sussex District Council.
 - The application Ref DM/16/2035, is dated 11 May 2016.
 - The development proposed is erection of 9 No. dwellings with association parking, landscaping and access.
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Preliminary matters

1. The Government issued a Written Ministerial Statement on 12 December 2016 concerning Neighbourhood Planning. It sets out a change to government policy with regard to the circumstances under which relevant policies for the supply of housing within neighbourhood plans are automatically deemed to be out of date where there is a lack of housing land supply. The parties were requested to comment on this and I have taken the responses into account. The WMS is a significant material consideration.
2. A Section 106 (S106) Unilateral Undertaking (UU) was received on 20 February 2017. I consider this below.

Decision

3. The appeal is dismissed and planning permission refused.

Application for costs

4. An application for costs was made by Copperwood Developments against Mid Sussex District Council. This application is the subject of a separate Decision.

Main Issues

5. The Council indicated that if it had retained jurisdiction over the case, planning permission would have been refused. A revised access location onto Cuckfield Road was submitted for consideration in July 2016 to address concerns related to overshadowing on plot 1. Plans showing revised visibility splays were submitted with the appeal documentation. In August and September 2016, West Sussex County Council, as the Highway Authority, indicated that adequate visibility splays can be provided, subject to conditions. I agree with this assessment. After visiting the site and from the putative reasons given, I consider therefore that the main issues are as follows:

- The effect of the proposed development on the character and appearance of the area;
- The effect on the living conditions of future occupiers, in terms of the influence from nearby trees;
- Whether contributions towards infrastructure are necessary or desirable and whether they would be provided; and
- Whether the proposal would represent sustainable development, in terms of the definition in the National Planning Policy Framework (NPPF).

Reasons

The site and surroundings

6. The settlement of Ansty is clustered around a road junction where 'ribbon' development extends along the B2036 Cuckfield Road, the A272 and Deaks Lane. The site consists of an agricultural field behind Challoners, a large detached house on the west side of Cuckfield Road on the southern edge of the village. At the time of the site visit, the field was being used for grazing by sheep. A public footpath borders the southern edge of the field which links to the A272 west of the village. It was evident at the site visit that this is part of a popular circular route for local residents also using footways along the main roads. Cuckfield Road is part of a busy network of routes connecting Burgess Hill, Cuckfield, Hurstpierpoint and Haywards Heath. Despite this, the character of the area derives mainly from the varied and undulating fields and woodland that surrounds the village and is distinctly rural.

Policy background

7. The development plan for the area includes saved policies of the Mid Sussex Local Plan of 2004 (LP). The putative reasons for refusal indicate that LP policies B1, B7 and G3 are relevant. B1 requires a high standard of design generally, amongst other things advising that development should demonstrate a sensitive approach to urban design by respecting the character of the locality, especially the landscape setting and contribution to sense of place. B7 resists the loss of trees which are of significant public amenity value. Policy G3 requires contributions to community infrastructure. The LP is of some age but these policies, read together, do not differ significantly from corresponding aims of the National Planning Policy Framework (NPPF) of 2012. As such, they attract full weight.
8. The replacement Draft Mid Sussex District Plan 2014-2031 (MSDP) was submitted for examination in August 2016 and that process is ongoing at the current time. Due to the advanced stage reached, the relevant emerging policies attract limited weight. Policies DP24 and DP36 express similar design quality and tree protection objectives to those of LP policies B1 and B7. Emerging policy DP18 permits development where any necessary social, physical and green infrastructure needed to support the proposed development and contribute to sustainable communities exists.
9. The Ansty, Staplefield and Brook Street Neighbourhood Plan (NP) was examined by the independent Examiner in October 2016 and after modifications, the Referendum Stage version was published in December 2016. The referendum took place on 19 January and the plan was approved. It was 'made' by the Council as of 2 February 2017 and now forms part of the development plan.

10. The purpose of the NP is to guide development within the local area. It has been prepared taking account of the emerging policies of the MSDP and the population profile of the area. Amongst other aims set out in the vision statement and confirmed in the plan objectives is the desire to *'have accommodated new housing to help meet the demand and need for new and affordable homes by using land within or close to the established settlement boundary. A mix of housing ensures that smaller houses are available for young families as well as older people wanting to downsize'*. In this latter respect, policy AS4 of the NP was modified at the request of the plan Inspector to avoid being too prescriptive. She said *'It is important that the mix of housing delivered does meet the prevailing housing need but the NPPF also requires that sites are viable, deliverable and provide a wide choice of quality homes.'* The policy says that *'residential developments must provide a mix of dwelling sizes (market and affordable) that reflect the best available housing evidence. In the early part of the plan period, the housing evidence indicates a particular emphasis on the provision of 1- and 2-bed dwellings. It is therefore expected that in the early part of the plan period developments will provide a mix of dwellings include the provision of 1 and 2 bedroom dwellings to reflect the local housing need.'*
11. Policy AS1 relating to new housing development was revised following examination to ensure there is an element of flexibility to meet housing need across the plan period. The referendum version of the policy advises that *'the NP area is subject to significant environmental constraints and as a result new housing should be focused within the development boundary of Ansty as identified in the proposal map. Other proposals for small scale housing development of up to 10 units, to meet identified local need will only be permitted subject to certain criteria including that it provides a mix of tenure types including private, social rented and shared equity (intermediate) to meet local housing need.'*
12. Planning permission has been granted on appeal for 8 dwellings on a field at Barn Cottages to the north. This site adjoins existing built development in the village and is separated from the appeal site by a small field behind North Cottages, the neighbouring property to Challoners. The appellant advises that in October 2016, outline planning permission has also been granted for 20 dwellings on a site south of Bolney Road, approximately due west of the Barn Cottages site. Both of these sites lie within the 'built up area boundary' or settlement boundary of the village as defined in the NP¹. These sites reflect proposed site allocations in the MSDP.
13. The Council concedes that it is unable to demonstrate a 5 year supply of housing land as required by paragraph 47 of the NPPF. Moreover, there is no yardstick against which to assess the adequacy of any level of supply. The latest information, in the form of a letter to the Council from the Examining Inspector dated 20 February 2017 indicates that a significant uplift to the Council's initial OAN (Objectively Assessed Need for housing) estimate is necessary in order to improve affordability and take into account unmet need in the wider Housing Market Area including neighbouring authorities. Paragraph 49 of the NPPF says that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Where policies are out-of-date,

¹ Sites AS5 and AS6

paragraph 14 says that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or specific policies indicate development should be restricted². Planning Practice Guidance (PPG)³ says that where the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites, decision makers may still give weight to relevant policies in the emerging neighbourhood plan, even though these policies should not be considered up-to-date. The PPG goes on to say that documentation produced in support of or in response to emerging neighbourhood plans, such as basic conditions statements, consultation statements, representations made during the pre-examination publicity period and independent examiners' reports, may also be of assistance to decision makers in their deliberations. There is agreement that policy C1 of the LP, which restricts the supply of housing land, is out-of-date.

14. In the circumstances that pertain to this case, the independent Examiner recommended changes to the NP to reflect the latest up-to date evidence of housing need prepared to support the MSDP (the Housing and Economic Development Needs Assessment 2015 and the OAN figures⁴). The WMS confirms that where a planning application conflicts with a NP that has been brought into force, planning permission should not normally be granted. However, it goes on to note that where the local planning authority cannot show a 3 year supply of deliverable housing sites, policies in a NP that plan for housing can still be considered to be not up-to-date. On the basis of the information before me, I consider that policies AS1 and AS4, whilst they demonstrate sufficient flexibility to respond to more firm information when available, can reasonably be construed as restricting the supply of housing and are not up-to-date in this respect. The possibility of small scale development outside the settlement boundary, such as the scheme before me, must be seen in that light. The scheme then falls to be considered under the second bullet point of paragraph 14 of the NPPF.

Character and appearance

15. The first putative reason for refusal indicates that the proposal would fail to reflect the edge of village location and the spacious rural character of the area as a result of the number of units proposed.⁵ The site lies outside the built up area boundary of the village defined in the LP and outside the enlarged area set out in the NP.
16. The whole of the site lies within an area designated as a Countryside Area of Designated Restraint in the LP. However, analysis of landscape character is now considered a more appropriate way of assessing effects on the countryside. Most of the site area lies well behind the host dwelling which is quite prominent in the street scene. A string of houses lies on the opposite east side of the road behind planting and gardens but these do not influence the character of the appeal site. Other buildings and dwellings in the centre of the village to the north can just be seen with fields and gardens in between. There is no development to the west or south. The road generates some noise

² There are no specific policies that apply in this case

³ At ID 41-082-20160211

⁴ The Examiner remarks that the evidence is not yet tested. I have taken into account the comments of the District Plan Examiner as put in the appellant's Statement of Case.

⁵ In this respect I note that the appellant's final comments omit this part of the putative reason

but the main part of the site proposed for development is distinctly tranquil. The open nature of the field contributes strongly to an impression of undeveloped countryside behind a house and two cottages. Due to the general fall in levels to the south and open fields to the north and west, the site is not particularly well enclosed.

17. The Mid Sussex Landscape Character Assessment of 2005 notes that the local settlement pattern is 'unobtrusive... in many parts' and '*currently sits well within the rural landscape although there is a danger of the visual impact of new development.*' Dealing initially with landscape character, a distinct group of 8 of the proposed houses (plots 2-9) would appear isolated behind the road frontage and completely unrelated to the predominant ribbon development along Cuckfield Road. The 2-2.5 storey bulk and close positioning of the dwellings in the group would appear conspicuous and out of keeping in this edge of village location. The dwellings would present a distinctly hard edge to the undeveloped countryside to the south. Visually, it would be a stark change for users of the footpath in both directions, who currently enjoy a very rural experience. Although this will change to a degree after the Barns Cottage scheme is completed, that would be adjacent to the central part of the village and separated from the appeal site by a field.
18. Moreover, the southern elevations of dwellings on plots 2-5 would be visible through trees to users of the B2036 and pedestrians walking along the footway past Mount Noddy, particularly in winter. The combination of this with the appreciably urban feel created by the close juxtaposition of the flank wall of the dwelling on plot 1 with the new access road would completely change the sense of a gradual introduction to development in the village that exists at present.
19. I conclude on landscape and visual impact that by reason of the proposed height and density of the scheme it would appear isolated, conspicuous and unrelated to the centre of the village and would unacceptably urbanise the rural character of the edge of the settlement, seriously diminishing the landscape setting of the village and its rural identity. This would conflict with the aims of LP policy B1, emerging policy DP24 of the MSDP and the new housing development aims of NP policy AS1.

Living conditions

20. Taking into account the most recent layout shown on drawing 1625_sk11 A, dwellings on plots 2, 3, 4 and 5 would be about 10 and 15m from the row of trees along the footpath. Their gardens would be well within the shade pattern predicted on drawing TPP-CC/933 AR2811. However, the likelihood of shade is not so serious as to persuade me that future occupiers of these dwellings would exert pressure for felling. The Council's Tree Officer has no concerns with the latest plan, which was submitted to the Council before the putative reasons for refusal were issued. I find no conflict with the tree protection objectives of LP policy T4 or MSDP policy DP19.

Infrastructure contributions

21. Turning to the need for contributions, having regard to the Council's Development and Infrastructure Supplementary Planning Document, it is accepted by the appellant that the development would be required to provide contributions towards leisure space, formal sports provision, the new village hall, education, libraries and cycle and pedestrian improvements. A S106 UU

has been provided dated 7 February 2017 which is intended to ensure that contributions towards these aspects of infrastructure would be provided. This complies with the aims of LP policy G3 and policy DP18 of the MSDP. I consider that the provisions of the UU are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 204 of the NPPF and Regulation 122 of the CIL Regulations (2010). As such I give it significant weight.

The sustainability of the proposal

22. The NPPF advises that sustainability has three dimensions, social, economic and environmental. The development would be sustainable in an economic sense because of the employment created and the contribution that new residents of the 3 and 4 bedroom houses would bring to the vitality of a village that recognises it needs to grow (NP paragraph 4.2). However in a social sense, whilst providing much needed new housing, the proposed dwelling mix would not do anything to contribute to the clearly stated needs of the village which are identified in the NP as, initially, 1 and 2 bedroom dwellings in a mix of market and affordable. No viability study or plausible reason has been provided to show why this aim, which is a point made forcefully by local residents, has not been catered for at all.
23. Importantly, the environmental impact in terms of the effect on character and appearance would be unacceptable. For these reasons, the proposal would not represent sustainable development.

Conclusion

24. There is a significant shortfall against the requirement for a 5 year supply of housing land. I have concluded that the effect on trees would be acceptable. However the harmful impact on the character and appearance of the area significantly and demonstrably outweighs the benefits of the scheme in terms of a useful contribution to housing need. The failure to recognise the housing mix requirements of the adopted NP also counts against the proposal. For these reasons, the appeal should not succeed.

Paul Jackson

INSPECTOR