

Appeal Decision

Hearing held on 23 May 2017

Site visit made on 23 May 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 6th June 2017

Appeal Ref: APP/D3830/W/16/3165199

Land north of Turners Hill Road, Turners Hill RH10 4PB

- 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 Hartmires Investments Ltd against the decision of Mid Sussex District Council.
 - The application Ref DM/16/1887, dated 29 April 2016, was refused by notice dated 24 August 2016.
 - The development proposed is construction of 22 affordable residential units with new footway and means of access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was in outline for 22 affordable dwellings, together with a new footway and means of access for vehicles and pedestrians. All other matters, layout, scale, appearance and landscaping were reserved for future consideration. The Council determined the application based on two plans, Drawing Nos 02/E and 04/F, showing how the appeal site could accommodate 22 dwellings, served by an internal access driveway. Whilst these plans are material to my overall consideration of the appeal proposal, other than defining the extent of the site, they are only illustrative and I have treated them accordingly.

Main Issues

3. The main issues are:
 - a) The effects of the proposal on the character and appearance of the countryside and the setting of the High Weald Area of Outstanding Natural Beauty (AONB);
 - b) Whether or not the site would be a suitable location for residential development having regard to its location outside the settlement boundary of Turners Hill;
 - c) The effect of the proposal on the wildlife and conservation interests of the Ashdown Forest Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI);
 - d) Whether or not the proposal makes adequate provision for investment in local infrastructure the need for which arises from the development.
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Reasons

Planning policy

4. The development plan currently comprises the adopted 2004 Mid Sussex Local Plan (Local Plan) and the Turners Hill Neighbourhood Plan (N'hood Plan), which was made in March 2016. The Draft Mid Sussex District Plan (District Plan) is currently under-going examination. However, its policies have yet to be fully tested and significant outstanding issues and objections are still to be resolved. It is likely to be some time before the plan is adopted.
5. The extent to which policies in the Local Plan, Neighbourhood Plan and Draft District Plan policies are consistent with the National Planning Policy Framework (the Framework) was discussed at the hearing. The Council accepts that it is currently unable to demonstrate a three-year supply of deliverable housing sites in the District. In the absence of a five-year supply, policies relating to the supply of housing in the Local Plan must be considered out-of-date in relation to paragraph 49 of the Framework. Similarly, following the Written Ministerial Statement of December 2016, policies in the N'hood Plan must also be considered to be out-of-date, in the absence of a three year supply of housing sites.
6. Consequently, in accordance with paragraph 14 of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. My assessment of the weight to be given to each of the relevant policies is set out in my conclusions on the main issues in relation to the appeal.

Character and appearance

7. The appeal site is part of a large field that was originally in agricultural use outside the village of Turners Hill. In September 2015 planning permission was granted to change its use to a natural burial ground, Ref: DM/15/1035. This proposal also provided for car parking, landscaping, the erection of a small reception building and the creation of a new access and footpath link towards the village. Implementation of this permission has begun with the construction of the access and footway, including translocation of hedges to provide visibility splays. The access and footway were un-surfaced at the time of my site visit but when completed they could serve the residential development.
8. Turners Hill is centred on the crossroads of the B2028 and B2110. Most of the existing residential development lies close to the north-south route through the village. The parish church is situated on a high point to the west of the village centre, just beyond the junction of Turners Hill Road and Paddockhurst Road. It marks the extent of the village and a distinct change in the character of the area. To the west of the church there is open countryside with narrow lanes enclosed by mature trees and hedgerows. Although Turners Hill Road is the boundary between the AONB and other countryside, the land on both sides shares similar characteristics of a mix of fields and woodland. The roadside trees and other vegetation is taller and more mature enclosing the AONB to the south, whereas on the northern side there are occasional gaps which give long views over the open countryside and towards the North Downs.

9. Immediately to the west of the appeal site are some small single storey buildings that are within Tullys Farm, in an area that provides summer recreational facilities. Its other leisure operations lie further to the west. To the south of the road is the cricket ground and pavilion. Elsewhere in the vicinity of the appeal site there are scattered groups of traditional farm and agricultural buildings. The existing small-scale developments and predominantly rural land uses to the north of Turners Hill Road, positively contribute to the setting of the AONB.
10. In this context a development of 22 modest-sized dwellings set in small plots would be completely out of character with the surrounding rural area. Neither can it be compared with the permitted use of the remainder of the field as a natural burial ground. Whilst that will include some hard-surfacing and modest buildings, over time the planting and growth of trees would ensure that this low-key use would integrate effectively into the countryside. By contrast a residential development would introduce buildings, roads, parking areas, boundary treatments and people into this otherwise unspoilt, tranquil and open countryside. In order to accommodate the number of dwellings proposed, the layout is likely to be typical of that which would normally be found in an urban environment and would therefore appear alien and out of place in this rural location.
11. Immediately to the north of the site the land falls away and the development would be highly visible from footpath 68W which passes along the edge of the approved burial ground and into Butchers Wood. At the entrance to the woodland the development would be particularly prominent due to its position on much higher ground, from where it would appear to be on the skyline. This would reinforce its alien and incongruous character within this rural setting.
12. Other than the existing roadside hedge and tree screen on the eastern side of the site the remaining boundaries appear to be completely arbitrary. They would not follow any noticeable natural features on the site. Whilst the appellants' landscape character and visual impact assessment suggested that the boundaries could be the subject of planting, the illustrative layout suggests that the space available for such landscaping would be extremely limited without reducing the size of the rear gardens. In any event the purpose of landscaping is not to hide otherwise unacceptable development, but to permit the successful integration of development into its surroundings. Notwithstanding the outline nature of this proposal, there was nothing in the evidence to convince me that this could be achieved.
13. The tree screen on the southern side of Turners Hill Road would reduce visibility of the site from the AONB throughout most of the year. However, in the winter months the roofs could well be seen from footpath 70W. Regardless of the visual screening, the introduction of a residential development so close to the boundary of the AONB would adversely affect its essential character arising from the more intensive use of the site.
14. I therefore conclude that the proposal would be unacceptably harmful to the character and appearance of the countryside and the setting of the AONB. In this respect it would conflict with saved Policy C1 of the Local Plan and Policy THP8 of the N'hod Plan, both of which seek to protect countryside and restrict development outside built-up area boundaries. However, in view of the woeful shortage of deliverable housing sites within the District, I can give only limited

weight to this conflict. Although the housing numbers and site allocations within the emerging District Plan have still to be agreed, emerging Policy DP10 consistent with the Framework insofar as it seeks to protect the countryside for its intrinsic character and beauty rather than its own sake. The proposal would therefore be contrary to this emerging policy. However, in the absence of a five-year housing land supply this can only attract limited weight.

15. The proposal would also be contrary to saved Policy C4 of the Local Plan and emerging Policy DP14 of the District Plan, both of which seek to conserve and enhance the natural beauty of the High Weald AONB and ensure that development on land that contributes to its setting does not detract from its essential qualities. This policy is consistent with the advice of paragraphs 113 and 115 of the Framework which, amongst other things, states that great weight should be given to conserving the landscape and scenic beauty of AONBs. This is a matter to which I attach significant weight.

Location of development

16. The appeal site lies well beyond the built-up boundary of Turners Hill and is divorced from all the existing clusters of residential development. It would be immediately adjacent to a natural burial ground, users of which would be seeking somewhere of peace and tranquillity. Consequently, a residential development on this site would conflict with this adjacent use and be physically, functionally and visually separate from the village.
17. I acknowledge that future residents could walk to the centre of the village, a distance of approximately 0.7km, using the new footpath alongside Turners Hill Road, an additional length of footpath that is proposed outside the wall enclosing the church, and the existing footways towards the school and beyond. However, the likelihood of future occupiers choosing to do so would not solely be a matter of distance, but also of the route's quality and attractiveness. The walk would be along footways of differing widths, parts of which would be separate from the road, but elsewhere would be narrow, immediately adjacent to it, and where significant volumes of traffic are almost certainly travelling in excess of 30mph.
18. Whilst the route could be fully lit, it is not at the moment. To provide lighting, as offered by the appellants, would introduce lighting into the countryside outside the village which would have other harmful consequences. To reach the village shop would require crossing the road a total of six times. This combination of factors demonstrates that walking into the village would not be a particularly pleasant experience and would be a significant challenge for anyone who was young, elderly or mobility impaired. To reach the Crown Public House, the village hall or the recreation ground which are further away would also involve crossing the B2028, the busiest of the roads through the village.
19. These factors suggest that even with the provision of the additional footways, future occupants of the proposed development would be unlikely to choose to walk into the village on a regular basis. Neither would cycling on these busy rural roads be an attractive way to travel. Realistically, it would be much easier and quicker to make the journey by car, especially if going to the village hall (which is more than 1.5km from the site), undertaking the journey at night or in bad weather. I therefore consider that residents of the proposed development would be likely to be more dependent on a car, even for

undertaking short journeys, than those who live closer to the village centre. It could also discourage them from making use of these local facilities. This would not accord with the Framework's advice of locating rural housing where it will enhance or maintain the vitality of rural communities.

20. Furthermore, the limited range of services in the village means that residents would be likely to travel further afield to Crawley or East Grinstead to meet their needs. This journey would be much easier to do by car than relying on the 2-hourly bus service along Turners Hill Road. I have no doubt that occupants of the development who did not have access to a car would feel isolated, making the site particularly unsuitable for meeting the needs of some of those who would be likely to qualify for affordable housing.
21. Taking all these factors into account, I consider that the site is an isolated location which is unrelated to the existing physical structure of the village and too far from it to be easily accessible on foot or by bike. I therefore conclude that it is not suitable for a residential development and would be contrary to saved Policies C1 and T4 of the Local Plan and THP8 of the N'hood Plan. As previously set out, conflict with Policies C1 and THP8 can only carry limited weight in view of the lack of housing land supply. However, saved Policy T4 is a criterion based policy which, with the exception of criterion (a), is broadly consistent with the Framework. Whilst the proposal would comply with criteria (b), (c) and (g), it would be contrary to criteria (d), (e) and (f). Conflict with this policy is therefore a matter which attracts significant weight.

Ashdown Forest

22. The appeal site lies within 7Km of Ashdown Forest, which is designated as a Special Protection Area (SPA), Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI). Although Ashdown Forest is within Wealden rather than the Mid Sussex District, it is a site of international nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). The Council has therefore determined that mitigation measures are required to ensure that the appeal proposal either alone, or in combination with other plans and projects, would not cause significant harm to the protected species.
23. There is agreement between the parties that the mitigation measures should include contributions towards provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). It is proposed that the SAMM contribution would be secured through a planning obligation and it has been included in the Section 106 agreement that was presented at the hearing in relation to a variety of local facilities and services. As the SAMM would not involve provision of infrastructure, I am satisfied that this agreement would be an appropriate mechanism for securing this element of the necessary mitigation measures.
24. The provision of a site specific SANG has not been identified so could not be secured through the agreement. Neither could the agreement be used to secure a financial contribution towards a SANG elsewhere in the District due to the restriction on pooling of contributions set out in the Community Infrastructure Levy (CIL) Regulations. The parties therefore suggested that the SANG could be secured by imposition of an appropriate condition, the wording of which was discussed at the hearing.

25. However, I have some concerns about the use of conditions in view of the Planning Practice Guidance's¹ (PPG's) advice in relation to negatively worded conditions. The PPG advises that such conditions should only be used in exceptional circumstances and in the case of more complex and strategically important development.
26. Furthermore, although the suggested condition includes reference to 'a scheme for the mitigation of the effects of the development on the Ashdown Forest SPA', no details of any such scheme were presented with the appeal or at the hearing. I therefore have no means of assessing whether or not such a scheme would be likely to be suitably located and used by occupants of the proposed development. In these circumstances I cannot be certain that the necessary mitigation would be effective, even if I was satisfied that it could be secured through the suggested condition.
27. I therefore conclude that the proposed development would be harmful to the wildlife and conservation interests of the Ashdown Forest SPA. It would conflict with the provisions of the Habitats Regulations and be contrary to the advice of the Framework. Saved Policy C5 of the Local Plan seeks to protect areas designated for their nature conservation interests but makes no reference to Ashdown Forest. Consequently, there is no direct conflict with this policy and it has only limited relevance to the determination of this appeal. Whilst emerging Policy DP15 of the District Plan specifically addresses the protection of Ashdown Forest, it has yet to be adopted and therefore cannot carry full weight. However, notwithstanding the limited relevance and weight that can be attached to these local policies, conflict with national policy carries significant weight in view of the statutory protection given to the SPA.

Local infrastructure and services

28. At the time the Council determined the application no legal agreement had been completed to secure contributions towards local infrastructure and services. These were sought for leisure facilities, transport, education and libraries. The Council wished the agreement to secure the permanent retention of affordable housing with an acceptable ratio of tenures.
29. However, full justification for these contributions and provisions were set out in the Council's appeal statement. Based on this information I am satisfied that the contributions meet the tests set out in paragraph 206 of the Framework. A draft agreement was presented at the hearing and a completed agreement was submitted shortly afterwards. I have therefore taken it into account in my assessment of the scheme. A Unilateral Undertaking was also presented at the hearing. This provided for the completion and on-going maintenance of the footpath between the church and the appeal site. I am satisfied that this would also be necessary to make the development acceptable in planning terms and have taken its provisions into account.
30. I conclude that the facilities and services, the need for which would be brought about by the development, would be provided. In this respect, the proposal would comply with the requirements of saved Policies G3 and H4 of the Local Plan and THP19 of the N'hood plan. Emerging Policy DP18 of the District Plan is also of relevance insofar as it refers to the evidence base that supports the contributions.

¹ Para 010 Reference ID:21-010020140306

Planning balance

31. The Council is unable to demonstrate a three year supply of deliverable housing sites and there is an acute need for affordable homes across the district. No new houses have been built in Turners Hill in recent years, even though the Local Plan allocated two sites for mixed housing development close to the village. Although planning permission has been granted for a development of 47 houses on the site at Clock Field, with a total of 14 affordable homes, this will not fully meet the identified needs of the parish, let alone those of the surrounding parishes. That scheme will therefore not contribute to meeting the wider needs of the District. In addition, no specific proposals have yet to come forward for other allocated site at Vicarage Field site, making it unlikely that other affordable houses will be provided in the near future.
32. Against this severe shortage of housing, the appeal proposal would provide 22 affordable homes in a parish where there is an identified need and a district where there is a dire need for affordable houses. The appeal site would provide 100% affordable housing, supported by a recognised provider of affordable homes. The Section 106 agreement would ensure the retention of these homes as affordable units in perpetuity. All these factors weigh in the scheme's favour and amount to a social benefit that attracts significant weight in the planning balance.
33. The development would also be beneficial to the economy as it would create jobs during the construction phase. However, these would be short-term. As the development would primarily be catering for people who have identified housing needs and who already live in the area, any additional expenditure in the local economy would be modest. The long-term economic benefits of the scheme would therefore be limited. The planning obligations securing provision of and contributions towards, local infrastructure and services are necessary to make the development acceptable in planning terms. These factors therefore have a neutral effect in the overall balance.
34. On the other hand, the proposal would result in significant harm to the character and appearance of the countryside and the setting of the AONB, matters which, in the current policy context, attract limited and significant weight respectively. In addition, there was no certainty that the wildlife and countryside interests of the Ashdown Forest could be adequately protected, a further environmental harm that attracts significant weight.
35. Furthermore, the proposal would be physically, visually and functionally isolated from existing development Turners Hill. Although it would be possible to link the site to the village with improvements to the footpaths, the resultant route would be neither attractive nor convenient for future occupants. Consequently, it is highly likely that residents would be over reliant on the private car for making their regular journeys. Occupants without regular access to a car would feel isolated.
36. In my view the need for housing, even when it is as pressing as it is in Mid Sussex, cannot be a justification for building new homes in the wrong place where they would fail to integrate with existing development, leaving future residents too far from the facilities that they need and socially divorced from the rest of the community. I consider this would seriously limit the social benefits of the proposal.

37. These factors lead me to conclude that the adverse environmental impacts of the scheme would significantly and demonstrably outweigh the limited social and economic benefits when assessed against the policies in the Framework as a whole. Overall the proposal would not be a sustainable development.

Conclusion

38. For this reason, I find that there are no material considerations that outweigh the conflict with the development plan. I therefore conclude that the appeal should be dismissed.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANTS

Rhodri Price Lewis QC	Landmark Chambers
Mike Taylor	Chilmark Consulting
David Jones	Chilmark Consulting
Mr Joshua Peacock	Lizard Landscape Design and Ecology

FOR THE LOCAL PLANNING AUTHORITY

Andy Watt BSc(Hons) MTPL, MRTPI	Senior Planning Officer
Helen Blakith BA(Hons) BTp	Housing Enabling Team Manager
Nicola Cresswell BA(Hons) Cert CIHT	Housing Enabling & Development Officer

INTERESTED PERSONS

Thelma Mason	Chair of Turners Hill Parish Council
Bruce Forbes	District Councillor for Turners Hill & Crawley Down

DOCUMENTS SUBMITTED AT THE HEARING

Doc 1	Submissions on behalf of the Appellants by Rhodri Price Lewis
Doc 2	Agreed Statement of Common Ground
Doc 3	Plans and elevations relating to application Ref: DM/17/1167
Doc 4:	Note on current housing needs within Turners Hill Parish
Doc 5:	Supplementary information: Northern West Sussex HMA housing numbers
Doc 6:	List of suggested conditions
Doc 7:	Draft S106 agreement signed by Appellants and agreed by County Council, District Council (awaiting final signature) ²
Doc 8:	Completed Unilateral Undertaking for the maintenance and management of the footpath

² Completed agreement received on 26 May 2017