



Appeal Decisions

Site visit made on 12 July 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 4th August 2017

Appeal A Ref: APP/D3830/W/17/3170474

Land at Long Meadow, Station Road, Sharpthorne RH19 4NY

- 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 Ian Eldred of Shire Barn Developments against the decision of Mid Sussex District Council.
 - The application Ref DM/16/1491, dated 5 April 2016, was refused by notice dated 1 September 2016.
 - The development proposed is the erection of 4 No. detached dwellings.
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Appeal B Ref: APP/D3830/W/17/3170965

Land at Long Meadow, Station Road, Sharpthorne RH19 4NY

- 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 Mr Ian Eldred of Shire Barn Developments against the decision of Mid Sussex District Council.
 - The application Ref DM/16/4274, dated 6 October 2016, was refused by notice dated 13 January 2017.
 - The development proposed is described as 'outline planning application to consider the erection of up to 3 No. detached dwellings with garages'.
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Decision

1. Appeals A and B are dismissed.

Procedural Matters

2. Appeals A and B both concern part of the rear garden of Long Meadow and would respectively involve the construction of four detached dwellings and up to three detached dwellings. Under appeal A (scheme A) full planning permission was sought, while for appeal B (scheme B) outline permission was sought.
3. With respect to appeal B access to the development is for determination, while matters relating to appearance, landscaping, layout and scale have been reserved for future consideration. The application subject to appeal B was, however, accompanied by a layout plan and floorplans and elevations for three detached houses, and the application drawings are described as being 'indicative' in the planning statement submitted with the outline application. For appeal B I have treated the application drawings as being indicative insofar as they relate to the matters which are not for determination.
4. To address the third and second reasons for refusal respectively for appeals A and B the appellant has submitted unilateral undertakings (UUA and UUB)

made pursuant to Section 106 of the Act. UUA and UUB would respectively obligate the appellant to make contributions of £12,560.00 and £9,420.00 to mitigate effects of either scheme on the Ashdown Forest Special Protection Area and Special Area of Conservation (the SPA/SAC). Either contribution would be used to assist with the implementation of a Strategic Access Management and Monitoring (SAMM) Strategy for the SPA/SAC. I shall refer to the SAMM obligations in greater detail in my reasoning below.

5. Reference has been made to the draft/submission version of the Mid Sussex District Plan (emerging Local Plan) in the reasons for refusal and the parties' cases. However, in relation to appeal B the Council has advised that the examination of the emerging Local Plan is ongoing and that '... at present limited weight can be afforded ...' to the emerging plan. I therefore consider that limited weight can be attached to the emerging Local Plan and I shall make no further reference to it.
6. I have considered the appeals concurrently as the issues raised by them for the most part overlap with one another.

Main Issues

7. The main issues are the effect of the development on:
 - the character and appearance of the area, including the High Weald Area of Outstanding Natural Beauty (the AONB) – Appeals A and B;
 - the living conditions of the occupiers of neighbouring properties, with particular regard to outlook, privacy and noise – Appeal A; and
 - the SPA/SAC – Appeals A and B.

Reasons

Character and Appearance

8. While the dwelling known as Long Meadow lies outside the AONB, its rear garden and thus the main body of the site is within the AONB. The northern section of the site also forms part of an ancient woodland.
9. The site lies behind the frontage dwellings on Station Road and Hamsey Road and schemes A and B would therefore both be backland developments. As the area within the immediate vicinity of the site is characterised by road frontage development both schemes would be at odds with the prevailing pattern of development in the area.
10. The properties on the northern side of Station Road at this point are set within generously sized plots. The plots for 4a to 10 Hamsey Road are also quite generously sized. The houses within scheme A, because of the limited space between them and their comparatively short rear gardens, would have the appearance of being much less spacious than the nearby existing dwellings. I therefore consider that scheme A would have a cramped appearance, which would be incompatible with its context.
11. The indicative block plan for scheme B suggests that this development would be less intense. Nevertheless, each of the houses would still be likely to lack the spaciousness exhibited by the dwellings immediately adjoining the appeal site.

12. I am also of the opinion that the intensity of schemes A and B would both fail to enhance the appearance of the AONB, which at this point is strongly influenced by the area of ancient woodland, which gives the northern section of the site a verdant appearance. I consider that the verdant appearance would be compromised by the proximity of the northernmost of the new houses to the woodland.
13. I am mindful of the comparative density analysis that the appellant has undertaken for both schemes. However, I consider that analysis is of limited assistance because the gross plot densities it has yielded have been skewed by the inclusion of the retained ancient woodland. The net plot densities are therefore likely to be higher than those identified in the appellant's analysis.
14. I accept that there would be limited views of either development from public vantage points. However, I consider that the schemes' limited public visibility does not provide a justification for development that would not be respectful of its surroundings. An argument that development is hidden from view is one that could be used all too frequently and if accepted could nevertheless result in an area's character being harmed.
15. For the reasons given above I conclude that the development would be harmful to the character and appearance of the area. The development would therefore be in conflict with saved Policies B1 and C4 of the Mid Sussex Local Plan of May 2004 (the Local Plan) and paragraphs 17 (the fourth core planning principle) 56, 58, 60, 61 and 115 of the National Planning Policy Framework (the Framework). That is because the development, through its siting and intensity, would not represent good design or respond sensitively to the area's character and it would fail to conserve or enhance the natural beauty of the AONB. As the development would be outside the built-up area boundary for Sharpthorne I consider there would also be some conflict with Policy C1 of the Local Plan, but only insofar as the development would not significantly contribute to the sense of local identity.

Living Conditions – Appeal A

16. The access to the development would run parallel to the western elevation of Long Meadow and there are various windows in that elevation. Given the proximity of the access to Long Meadow's western elevation and retained rear garden I consider that the regular comings and goings associated with the occupation of four houses would have the potential to generate unacceptable levels of noise and disturbance for the occupiers of Long Meadow.
17. A row of mixed conifer trees, four metres or so in height¹, adjoin the site's boundary with Bramble Cottage. Those trees would be capable of providing visual screening of the house within Plot 1 for the occupiers of Bramble Cottage. However, were those conifer trees to be removed for any reason, then I consider the siting of the house within Plot 1 would unacceptably effect the outlook for the occupiers of Bramble Cottage. Were the conifer trees to be removed there would also be some limited scope for the occupiers of Bramble Cottage to experience some actual or perceived loss of privacy, most particularly arising from the use of the access. I consider that it would not be possible to impose a condition that would ensure the long term retention of the conifers. I am also not persuaded that undertaking additional planting

¹ As identified in the appellant's arboricultural report

would adequately mitigate the adverse effect of scheme A on the living conditions of the occupiers of Bramble Cottage.

18. The houses within Plots 1 and 2 would be visible to the occupiers of 2 and 4a Hamsey Road (Nos 2 and 4a). However, I consider that there would be sufficient physical separation for the occupiers of Nos 2 and 4a not to experience any unacceptable loss of outlook. I also consider that the positioning of the windows in the rear elevations of the new house relative to Nos 2 and 4a would be such that the occupiers of the existing houses would not experience unneighbourly overlooking.
19. I consider that the siting of plot 1 relative to Bramble Cottage and the means of boundary enclosure that there would be, would mean that the occupiers of the house within plot 1 would not experience any unneighbourly overlooking.
20. For the reasons given above I conclude that scheme A would give rise to unacceptable harm to the living conditions of the occupiers of Long Meadow and Bramble Cottage. The development would therefore conflict with saved Policy B3 of the Local Plan because it would cause significant harm to the living conditions (amenities) of the occupiers of neighbouring dwellings.

SPA/SAC

21. The houses would be within 7Km of the SPA/SAC. While the SPA/SAC is in Wealden District Council's area, as opposed to the Council's area, regard still needs to be paid to any implications the schemes would have for the SPA/SAC. That is because the SPA/SAC it is subject to statutory protection under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations). Having regard to the provisions of the Habitats Regulations the Council has determined that mitigation measures are required to ensure that the schemes either alone, or in combination with other plans and projects within 7Km of the SPA/SAC, would not cause significant harm to the SPA/SAC.
22. The appellant and the Council are agreed that mitigation is required to safeguard the SPA/SAC. There are two aspects of the mitigation strategy that the Council is pursuing. The first element of the mitigation strategy involves the provision of Suitable Alternative Natural Greenspaces (SANGs). The purpose of SANGs being to act as alternative recreational destinations for new residents living within 7Km of the SPA/SAC. The second mitigation element concerns the implementation of an interim SAMM strategy to protect the SPA/SAC from new recreational pressures through managing visitor access and behaviour and monitoring visitor and bird numbers in the SPA/SAC. I have no reason to believe that SANGs and SAMM contributions would not meet the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) and the Framework.
23. As I have outlined above the appellant has entered into UUA and UUB which would obligate it to make a SAMM contribution for either scheme. As the implementation of the SAMM strategy does not involve the provision of infrastructure, I am content that making either of the SAMM contributions would accord with Regulation 123 of the CIL Regulations, ie not be contrary to the restriction on the pooling of contributions. The payment of either of the

SAMM contributions would address the Council's SAMM strategy for safeguarding the SPA/SAC.

24. However, establishing SANGs amounts to the provision of infrastructure and financial obligations relating to them are therefore subject to the CIL Regulations' pooling restrictions. To address the need to mitigate the impact of either of the development's on the SPA/SCA the Council has submitted that a condition could be imposed which would require the submission of a SANGs scheme (the SANGs condition). The requirements of the SANGs condition would be met by the establishment of a 'bespoke SANG' or the making of a payment, respectively £8,132 and £6,099 for schemes A and B, to support the maintenance and operation of a SANG leased and operated by the Council. While the wording of the SANGs condition does not identify the location of a Council operated SANG, as part of its appeal the case the Council has referred to a SANG strategy operating at East Court and Ashplats Wood.
25. The making of a payment under the terms of the SANGs condition would be likely to require the appellant to enter into a planning obligation under Section 106 of the Act. The conditions section of the Planning Practice Guidance (PPG) advises that a negatively worded condition precluding the undertaking of development until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However the PPG further advises that in exceptional circumstances a negatively worded condition may be appropriate in the case of '... more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk'².
26. Having regard to the size of the site and the actual or likely layouts for schemes A and B I consider that there would be little prospect of a bespoke SANG being provided as part of the development. Accordingly to comply with requirements of the SANGs condition a financial contribution would be necessary, with its payment needing to be secured via a planning obligation or other agreement. However, schemes A and B would involve the provision of a limited number of dwellings and I therefore consider that the developments in this instance cannot be considered to be either 'complex' or 'strategically important'. Having regard to the advice contained within the PPG I therefore consider that imposing a SANGs condition would be an inappropriate means of seeking to mitigate the effects of the development on the SPA/SAC.
27. Even if I were to accept that it would be appropriate to impose the SANGs condition, very little evidence has been submitted demonstrating how any SANGs contribution would be used. I am therefore not content that any sum paid, further to entering into a planning obligation to discharge the SANGs condition's requirements, would comply with the limitations on the pooling of contributions. The wording of the SANGs condition provides no certainty about where a SANG would be relative to the site. Accordingly on the available evidence I cannot be certain a SANG managed by the Council would be in a location that would be more accessible than the Ashdown Forest for the occupiers of schemes A or B and would therefore act as an alternative recreational destination.

² Paragraph: 010 Reference ID: 21a-010-20140306

28. For the reasons given above I therefore conclude that in the absence of adequate SANGs provision for the developments subject to appeals A or B they would have the potential to cause unacceptable harm to the SPA/SAC. The development would therefore be contrary to the Habitats Regulations and be in conflict with paragraphs 17 (the seventh core planning principle), 109 and 118 of the Framework because it has not been demonstrated that the biodiversity value of the SPA/SAC would be conserved by minimising the development's impact on it. While the reasons for refusal for both appeals cite conflict with saved Policy C5 of the Local Plan, I consider that not to be the case. That is because Policy C5 makes no reference to the SPA/SAC and it addresses development that would physically be in a Site of Special Scientific Interest, a Site of Nature Conservation Importance, a Local Nature Reserve and an Ancient Woodland.

Planning Balance

29. There is no dispute that the Council cannot currently demonstrate the availability of a five year supply of deliverable housing sites (HLS). In the absence of an HLS paragraph 14 of the Framework indicates that planning permission should be granted 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 Council has submitted that the HLS is currently equivalent to less than three years. I therefore consider that means that the policies relating to the supply of housing set out in the made West Hoathly Neighbourhood Plan and cited in the reasons for refusal should be treated as being out of date, when regard is paid to the provisions of the Written Ministerial Statement on Neighbourhood Planning of 12 December 2016.
30. The provision of three or four dwellings would make a very modest contribution to the supply of housing in the area and there would therefore be some limited economic and social benefits associated with this development. However, I have found that the development would cause unacceptable harm to the character and appearance of the area, including the AONB, and the living conditions of the occupiers of Long Meadow and Bramble Cottage. On the available evidence I have also found that the occupation of either development would have the potential to be harmful to the SPA/SAC. I therefore consider that the adverse impacts of the developments would significantly and demonstrably outweigh either of the developments' benefits, with there being conflict with saved policies of the Local Plan and the Framework. Given the aforementioned local and national policy conflicts I find the developments would be unsustainable.

Conclusions

31. For the reasons given above appeals A and B are dismissed.

Grahame Gould

INSPECTOR