



Appeal Decision

Site visit made on 12 December 2017

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th January 2018

Appeal Ref: APP/D3830/W/17/3180077

Bridge Hall, Cuckfield Road, Burgess Hill, West Sussex RH15 8RE

- 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 outline planning permission.
 - The appeal is made by Mr Paul Hunt (c/o Paul Hunt Investments Ltd) against Mid Sussex District Council.
 - The application Ref DM/15/04667 is dated 18 November 2015.
 - The development proposed is described as *'This application seeks outline permission for 30 dwellings on land at Bridge Hall. The affordable dwellings on site to total 9, of which 2 are to be age restricted and 7 for affordable rent. This is the request from MSDC'*.
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Decision

1. The appeal is allowed and outline planning permission is granted for 36 dwellings at Bridge Hall, Cuckfield Road, Burgess Hill, West Sussex RH15 8RE in accordance with the terms of the application, Ref AP/17/0054, dated 18 November 2015, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application was made in outline form and is clear that all matters are reserved apart from Access. I have therefore treated the plans as indicative. The appeal results from the Council's failure to determine the planning application within the statutory period. Although the Council refer to application AD/17/0054, it is clear from the submissions that the appellant is appealing against the non-determination of application DM/15/4667.
3. The Council's evidence indicates that the access is considered acceptable and the proposal would not harm highway safety. It also sets out that had they been in a position to determine the application they would have refused permission on the grounds of its allocation as a strategic housing site in the Mid Sussex District Submission Version District Plan 2014-2031 ('ELP') and in particular, that the proposal would not comply with the requirements of Policy DP9 in terms of future infrastructure provision.
4. The Council's statement also goes on to conclude that in terms of Paragraph 134 of the National Planning Policy Framework ('The Framework') less than substantial harm would be caused to the significance of a designated heritage asset in terms of its setting¹. Furthermore that harm would be caused to the character and appearance of the area from the amount of development and associated removal of trees within the site.

¹ Firlands, a Grade II listed building.

5. A Section 106 legal agreement has been submitted during the course of the appeal dated 9 October 2017. The agreement would secure 11 affordable dwellings and financial contributions towards education, libraries, formal sports, access demand, and community buildings/infrastructure and play space. The Council do not dispute that the obligation would secure the necessary contributions in accordance with the adopted Mid Sussex District Local Plan 2004 ('LP'). Having regard to the adopted development plan and on the evidence put before me by the parties, I consider that these obligations would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 ('the Regulations') and the tests for planning obligations set out in the Framework. I have therefore taken them into account.
6. The description in the banner heading above has been taken from the application form. However, Section E refers to a change in description to increase the number of units to 36 dwellings. This appears to have been at the Council's request and further consultation and notification was undertaken. It is clear that the Council would have determined the appeal on this basis and so shall I.

Main Issues

7. Given the above, the main issues are:
 - Planning obligations.
 - The effect of the proposal on the character and appearance of the area.

Reasons

The appeal site and its surroundings

8. The appeal site is formed by Bridge Hall, a substantial residential property set within maturely landscaped grounds and located immediately to the north of the River Adur. It lies on the periphery of Burgess Hill and access to the property is from Cuckfield Road which slopes up from the roundabout junctions of the A273, Sussex Way and Isaac's Lane. A substantial belt of mature landscaping and trees exists along this boundary and along the banks of the river, so much so that the existing property is not conspicuous within its surroundings.
9. Firlands, a Grade II listed building sits on the opposite side of Cuckfield Road. This property is a 2 storey white stuccoed residential dwelling with a modern slate roof and other features of a historical interest such as intact glazing bars, fringed eaves and a trellised wooden veranda. There is development immediately to the north including substantial buildings and facilities associated with the Burgess Hill Golf Centre with the golf course located abutting the western boundary.

Policy context

10. The site is a small part of a much larger area identified within the ELP as the 'Northern Arc' ('NA') and in accordance with emerging Policy DP9 is the main strategic housing allocation in the District Plan. It allocates this area for approximately 3,500 additional homes and associated new neighbourhood centres, including retail, education, health, employment, leisure, recreation and community uses.

11. Since the application was determined the ELP has passed the stage of public consultation on its Main Modifications but the Inspector's Final Report has yet to be published and there are further representations regarding the wording of the Policy DP9. I have also been referred to Policies DP19 (Transport) and DP24 (character and design) and given the stage of the process and the ELP is clearly of some weight.
12. Policy DP9 requires strategic mixed use development in this location to progress in accordance with a submitted allocation-wide masterplan, Infrastructure Delivery Strategy ('IDS'), Phasing Strategy and Financial Appraisal, to be approved in writing by the local planning authority. It also requires development to be in accordance with Policy DP7 which sets out a series of general principles based on the visions and objectives of the Burgess Hill Town Centre Strategy.
13. The Council submit that the proposed changes to Policy DP9 are not main modifications and work is currently being undertaken with the 3 main developers on the above strategies. Nonetheless, the Council's evidence does not confirm what stage such discussions have reached simply suggesting that adoption of these is anticipated at the end of March 2018. The required strategies have therefore yet to be approved in writing as required by that policy and no draft documents are before me.
14. The starting point is the development plan and Policy C1 of the LP classifies areas outside built-up boundaries as a Countryside Area of Development Restraint and lists the limited types of development to be permitted, save for some specified exceptions which are not relevant in this case. There is no dispute that the proposal would conflict with this policy but the Council clearly do not object to the principle of development given its allocation within the ELP. The dispute partly relates to the planning obligations required and this is a matter to which I now turn to.

Planning obligations

15. Policy G3 of the LP requires applicants to provide the costs of additional infrastructure required to service their development and mitigate their impacts. Thus, if the appeal site were not identified within the NA, then the Council would calculate the infrastructure requirements of the proposal using the adopted Development and Infrastructure Supplementary Planning Document ('SPD').
16. I accept that the Council and relevant stakeholders have concerns over the wider and more holistic delivery of infrastructure across the whole of the NA and to this extent have sought to rely on the provisions of an emerging policy. The appellant contends there is some disagreement between the main developers and the Council regarding the method of charging but whatever the case may be, the IDS required by Policy DP9 is not before me and noting historical delays, there is nothing substantive to suggest that its details have been agreed or are likely to be agreed in the very near future.
17. I am mindful that there may be specific infrastructure requirements for this area that may go beyond the Council's current SPD. However, on the evidence before me I am unable to be conclusive as to what these actually are or will be, despite what have been clearly lengthy and ongoing discussions between the parties.

18. I have also taken into account the representations made by third parties² but it has also not been demonstrated that the scale of development proposed requires any of the main infrastructure projects such as highway works and a new sewage plant that appear to be a necessity for the NA. The two roundabouts closest to the site are required to be upgraded but this does not appear to be until after 500 dwellings have been completed.
19. Moreover, contributions towards infrastructure and sustainable transport are secured, along with other funding to be used, amongst other things to manage increased traffic flows on the surrounding highway network. Furthermore, the submission of West Sussex County Council as highway authority does not refer to any wider highways infrastructure requirements or concerns regarding future delivery of such infrastructure for the NA.
20. Overall, I am not persuaded that if I were to allow the appeal the scale and effects would prevent the Council from delivering the wider infrastructure required for the whole of the NA, that its overall delivery would be prevented or that it would prevent the achievement of a high quality and cohesive development.
21. I am mindful of The Planning Practice Guide which sets out guidance on the circumstances where it might be justifiable to refuse planning permission on the grounds of prematurity³. It is clear that arguments that an application is premature are unlikely to justify a refusal for planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. It goes on to clarify this by stating that such circumstances are likely to be limited to situations where both (a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the planning process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging local or neighbourhood plan and (b) the emerging plan is at an advanced stage.
22. The plan is at an advanced stage but the proposal would not be so substantial in the context of the wider NA and its cumulative effects would not be significant that it would undermine the plan making process. To my mind, the Council have failed to indicate clearly how the grant of permission would prejudice the outcome and delivery of the strategic allocation within the NA. As such, an argument of prematurity is not justifiable in this instance. I cannot therefore accept that a refusal on such grounds is appropriate.
23. Whilst it is important that contributions in such cases are equitable I am also required to have regard to local and national policy in force at the time of my decision, unless material considerations indicate otherwise. In this regard I find that the proposal would accord with Policy G3 of the LP in terms of securing the necessary planning obligations. I also find that the contributions sought would not necessarily conflict with the general principles set out in Policy DP7. I return to the weight to be given to Policy DP9 in the balancing exercise below.

Character and appearance

24. I am satisfied that any future layout for the number of units and mix proposed could be designed to retain sufficient space between the likely siting of built

² Including the main NA developers.

³ Paragraph: 014 Reference ID: 21b-014-20140306.

form and the boundaries of the site. This is likely to result in the loss of some trees and undergrowth from around the fringes of the site and in order to achieve visibility but landscaping is a reserved matter and additional planting could be secured. Furthermore, a significant number of trees would be retained thereby protecting the existing tree belt that screens the site from its surroundings. The plans also show a substantial green corridor would also be retained along the site's boundaries with the River Arun and it is clear that such infrastructure is to be incorporated to provide access to the whole of the NA.

25. Internally there would be a loss of some of the trees but there is nothing substantive to suggest that some of these could not be retained within rear garden areas or the houses could be designed around them at the reserved matters stage. Additional landscaping could also be secured, to which the appellant has agreed and internally and along the boundaries of the site this would further limit any glimpses from Cuckfield Road into the appeal site.
26. Given the intended mix of 1 and 2 bed flats and 3 bed houses the shape and nature of the site could accommodate the amount of development proposed without appearing as an over intensive form of development. It may be that a few of the new houses and vehicles could be glimpsed from the access or between landscaping but overall, I find that the proposal would cause no harm to the character or appearance of the area. In reaching this view I am also mindful that the ELP allocation will eventually result in a significant change to this area of countryside and include significant residential development within this semi-rural setting.
27. For these reasons, the proposal would not cause harm to the character and appearance of the area. It would accord with Policies B1 and B7 of the LP which seek a high standard of design that respects the character of the locality, makes effective use of existing landscape features and does not result in the loss of trees which are of a significant public amenity value. It would also accord with Policy DP24 of the ELP insofar as it has similar design and character objectives.

Other Matters

28. The Council's submissions make reference to the potential traffic impacts on Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC'). For the reasons set out in the relevant report it concludes that there is not considered to be a significant in combination effect on the Ashdown Forest. On the evidence before me and as the competent authority, I see no reason to take a different view.
29. During the course of the appeal I requested further information from the parties regarding the findings of a protected species survey⁴. This report had suggested a further survey was required due to the presence, or otherwise of bat species. This survey was duly carried out in July 2017 and confirmed the existing dwelling supports a day roost for a singular soprano pipistrelle bat.
30. The proposal, through the demolition of the existing building and because it has a known roost would require a licence from Natural England. The need for a licence for the disturbance that would arise to the species means that the derogation tests from European Directives transposed into the Habitat

⁴ First environment limited Bat Activity Survey Report, May 2017.

Regulations need to be considered. I have had regard to the advice that NE applies the tests on a proportionate basis and also in considering the feasibility of alternative solutions, namely that the justification required increases with the severity of the impact on the species or population concerned.

31. In this particular case, the proposal would displace a day roost used by an individual soprano pipistrelle bat. The Council has confirmed it is satisfied with the mitigation measures proposed, subject to a condition requiring an updated report and management plan given the future reserved matters that are required to be submitted. Because adequate mitigation is proposed, on the available evidence the proposal is capable of meeting all three tests and there is a reasonable prospect of NE granting a licence. Accordingly, the local bat population or other protected species would not be adversely affected.
32. Concerns have been raised that the development would set an undesirable precedent. Any future proposals would need to be assessed on their own site-specific merits, in the context of any development plan and national policy then in place. The circumstances of other sites would be likely to be different and if proposals came forward elsewhere within the locality they would be assessed in the light of the factors relevant to those cases. The fact that the Council may have delayed determining other proposals has little bearing on the planning merits of this appeal and I consider the concerns about precedent do not offer a basis for resisting the scheme.
33. My attention has been drawn to an appeal decision⁵ where an Inspector took a different view insofar as the first main issue is concerned. However, I have not been provided with the full details and in that appeal the contributions appeared to be part of an adopted development plan. A draft IDS was submitted which is not the case here and furthermore, it also pre-dates the Framework. Consequently, I find that it is not directly comparable to the proposal before me and does not alter my view. In any event each case must be considered on its own merits.
34. In reaching this view I have also had regard to the representations made by third parties in relation to highway safety and drainage. I note that the relevant highway authority do not object on these grounds. The existing vehicular access from the public highway is to be improved and will include pedestrian links to the existing footway and the proposed estate roads. The proposal would not therefore cause harm to highway safety and drainage matters can be resolved by an appropriate condition.

Conditions

35. I have considered the conditions put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. A condition requiring the access to be implemented and visibility splays onto Cuckfield Road are necessary in the interests of highway safety. The Council suggests 2 conditions in relation to hard and soft landscaping but these would fall to be considered under the landscaping details required to be submitted as part of the reserved matters. I have not therefore imposed them. The same applies to a condition suggested requiring details of materials as appearance is also a reserved matter.

⁵ APP/X0360/A/11/2152037.

36. The Council has also suggested a Construction Management Plan and that hours of construction should be imposed by a separate condition. These are necessary in the interests of highway safety and the living conditions of adjoining occupiers. However I have combined them into single condition. To prevent the increased risk from flooding, I have imposed a condition requiring details of a sustainable surface water drainage system to be agreed and implemented.
37. To ensure that up-to-date information is provided when the specifics of appearance, landscaping, layout and scale are to be considered and as an update before construction begins, a condition is required to secure an updated Ecological Assessment Report, Construction Environmental Management Plan and Landscape and Ecological Management Plan. To my mind, the circumstances are exceptional and warrant such an approach.
38. Conditions 4 and 6 are conditions precedent and I am satisfied that such conditions are fundamental to the development to ensure that development does not occur until such matters are resolved, in the interests of the effects on highway safety.

Planning balance and overall conclusion

39. The starting point⁶ is that applications for planning permission must be determined in accordance with the development plan in force at the time of my decision, unless material considerations indicate otherwise. The proposal would conflict with Policies C1 and B10 of the LP but it would accord with a number of other policies of the LP and ELP, including those dealing with residential amenity, noise, design, infrastructure contributions, transport and affordable housing.
40. Nonetheless, the conflict is such that the proposal should be regarded as being in conflict with the development plan as a whole. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted, notwithstanding this conflict.
41. The Council do not dispute that they cannot currently demonstrate a 5 year supply of housing land. In turn, this means that Paragraph 14 of the Framework and its presumption in favour of sustainable development applies⁷. However, the parties also do not dispute that there would be less than substantial harm to the significance of a designated heritage asset, in terms of its setting. The Council consider this to be at the 'lower end' and I concur with that assessment. Consequently, before considering Paragraph 14 this harm should be weighed against the public benefits of the proposal.
42. Thirty six dwellings would make a modest contribution in social terms, helping to boost the supply of a mix of housing units in an area that cannot demonstrate a 5 year supply of housing land. Eleven units would also be affordable and in an accessible location close to services and facilities. It would provide short term economic benefits during construction and in the longer term from future occupants spending in the local economy. There would also be a financial benefit from the New Homes Bonus. Although reserved matters would need to be approved it is likely the scheme would be in a single phase and the units could come forward well in advance of the wider allocation.

⁶ Section 38(6) Planning and Compulsory Purchase Act 2004.

⁷ Because relevant policies for the supply of housing are out of date by virtue of Paragraph 49 of the Framework.

43. Although I give considerable weight and importance to the desirability of preserving the setting of a designated heritage asset, I share the Council's view that the public benefits outweigh the less than substantial harm to the setting of Firlands as a Grade II listed building. I have also found that there would not be any harm to the character and appearance of the appeal site or the area. Although this is a basic expectation of the LP it is likely there will be some gain in biodiversity from the ecological initiatives and future landscaping.
44. Overall, the proposal would fulfil the social, environmental and economic dimensions of sustainable development as set out in Paragraph 7 of the Framework. This is not a case where there are specific policies in the Framework which indicate that development should be restricted and it is therefore necessary to consider the fourth bullet point, first limb.
45. The adverse impacts of the proposal are the conflicts with Policies C1 and B10 of the LP in terms of location in the countryside and the significance of a heritage asset in terms of its setting. Although Policy C1 may no longer be considered to be a relevant policy for the supply of housing, it relies on a settlement boundary that can no longer be justified and is out of date. Furthermore, the site is in an area that will be subject to significant housing development as part of the NA and I attach little weight to the conflict with this policy. Policy B10 is also not entirely consistent with the harm/public benefit balancing exercise required by Paragraph 134 of the Framework.
46. I accept that there would be some conflict with the intended aims and objectives of emerging Policy DP9. However, this does not yet form part of the development plan and its requirements have yet to be approved by the Council and such approval could also be subject to further delays. Additional matters to be resolved are also raised in the representations to the Main Modifications consultation and I am not persuaded that the wider delivery and quality of the NA would be adversely affected.
47. There is a discrepancy in the Council's evidence which suggests Policy DP9 should be given both 'little' and 'very significant weight'⁸. Material considerations indicate to me that it is the former but even if I were to agree it should be the latter, taking everything together, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would therefore be the sustainable development for which the Framework indicates a presumption in favour.
48. In this particular case, this is a significant material consideration which indicates that the appeal should be allowed, notwithstanding the conflict that I have identified. Having considered all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR

⁸ Pages 130 and 134 of report to Planning Committee A – 16 November 2017 and Paragraph 5.7 of the Council's statement.

SCHEDULE

CONDITIONS

- 1) Details of the appearance, landscaping (to include details of trees to be retained and protected during construction), layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until the vehicular access serving the site has been constructed in accordance with the relevant approved planning drawing (BBH:320/201).
- 5) The use shall not be commenced until visibility splays of 2.4 metres by 90 metres have been provided at the centre of the proposed site vehicular access onto Cuckfield Road in accordance with plans and details submitted to and approved in writing by the local planning authority. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level or as otherwise agreed.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors and traffic management;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours.
 - viii) The erection and maintenance of security fencing/hoardings.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) Any subsequent application for the approval of the reserved matters shall include an updated Ecological Assessment Report (prepared in accordance with Chartered Institute of Ecology and Environmental Management guidelines and including the appropriate mitigation measures), a Construction Environmental Management Plan and Landscape and Ecological Management Plan (prepared in accordance with BS42020:2013 Biodiversity-- Code of Practice for Planning and Development). Development shall be carried out in accordance with the approved plans.