



Appeal Decision

Hearing Held on 17 July 2019

Site visit made on 17 July 2019

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2019

Appeal Ref: APP/D3830/W/18/3200756

Land Parcel 526673 120929 London Road, Hickstead, Sussex RH17 5LZ

- 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 Thornton Properties Ltd against the decision of Mid Sussex District Council.
 - The application Ref DM/17/3382, dated 16 August 2017, was refused by notice dated 19 October 2017
 - The development proposed is described as a "mixed commercial and residential development comprising two light industrial/office units and 9 no new-build dwellinghouses (C3)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision it has adopted the Mid Sussex District Plan 2014-2031 (MSDP) on 28 March 2018, which replaced the Mid Sussex Local Plan 2004. The Council's decision notice refers to the development resulting in a significantly greater number of dwellings being approved in the parish of Twineham than around the 20 dwellings allocated under Policy TNP1 of the Twineham Neighbourhood Plan (TNP) which was made on 24 March 2016.
3. However, the use of a maximum figure in Policy TNP1 of the TNP conflicts with, among others, Policy DP4 of the MSDP which seeks a minimum housing requirement for the District. This results in tension between the two plans and in such circumstances, although the development plan must be considered as a whole, any tension between elements of it must be resolved in favour of the last to be adopted¹, which in this case would be the MSDP. Consequently, the Council accepts that the numerical conflict between the two plans is no longer a reason to resist the development as set out in its third reason for refusal.
4. During the Hearing I was presented with a number of documents. The Council provided a copy of its Housing Delivery Test² (HDT) results and copies of Policies DP15, DP18, DP20, DP21 and DP26 of the MSDP. The Council also provided a copy of its draft housing allocations and five year housing land supply calculation as at 1 April 2019 and updated on 17 July 2019. The appellant provided me with planning obligations by way of a unilateral undertaking pursuant to section 106 of the Town and Country Planning Act

¹ Section 38(5) of the Planning and Compulsory Purchase Act 2004

² Housing Delivery Test: 2018 Measurement, Published 19 February 2019

1990. I was also provided with an email from the Council's Planning Services Team Manager³ regarding the requested financial contributions required to offset the impact on the development on services and facilities. Each party accepted the late submission of these documents which I have taken into account in reaching my decision.

Main Issue

5. The main issue is whether the development is in an appropriate location for the proposal having regard to the Development Plan and the National Planning Policy Framework (the Framework).

Reasons

6. Policy DP6 of the MSDP sets out the settlement hierarchy for the District and seeks to direct development to within towns and villages with defined built-up area boundaries. Under Policy DP6 of the MSDP, Hickstead is defined as a Category 5 settlement which are small settlements that have very little or no services. Hickstead lies outside of any built-up area boundary and in such circumstances, the expansion of settlements will only be supported where it meets the exceptions listed at points 1, 2 and 3 of Policy DP6 of the MSDP. In this instance, the proposal would satisfy point 1 as it seeks a development that is fewer than 10 dwellings.
7. Turning to point 2 of Policy DP6 of the MSDP, the appellant argues that Hickstead itself is a settlement and the site is contiguous with it and thus, it is in compliance with this particular point. The appeal site is currently used for staff parking and the storage of vehicles used in association with the adjoining business that hires out lifting equipment. At the Hearing it was also stated that a local car rental business also parks vehicles at the site. To the north and south of the site are other businesses and dwellings arranged in a largely linear manner along London Road. To the rear of the site are further dwellings, and a commercial site named 'Trumps' which has been granted permission at appeal⁴ to be demolished and replaced by three dwellings. Given the development that surrounds the site, I am satisfied that it forms part of a settlement and is contiguous with it.
8. The third strand of Policy DP6 states that the development must be demonstrated to be sustainable, which is expanded upon within Policy DP21 of the MSDP which states that decisions will take account of whether a scheme is suitably located to minimise the need to travel, while noting that there might be circumstances where the development needs to be located within the countryside. This is consistent with paragraph 102 of the Framework which sets out its objectives for promoting sustainable transport so that opportunities from existing or proposed transport infrastructure are realised, for example in relation to the scale, location or density of development that can be accommodated and that opportunities to promote walking, cycling and public transport use are identified and pursued.
9. In this regard, the appellant has provided a list of the services that can be accessed from the site and its proximity to bus stops, which is reflected in its revision to the "Settlement Services Matrix⁵" and through a map detailing the

³ Email from Elaine Munns dated 17 July 2019 @ 12:05

⁴ APP/D3830/W/17/3185677 dated 18 January 2018

⁵ Appendix A to Appellant's Appeal Statement Addendum dated July 2018

location of local services. Although I accept that some services would be available for the future residents of the dwellings, I do not consider them sufficient for day to day living.

10. The development proposes two and three bedroom dwellings which would be suitable for families. The appellant has not identified the proximity of the site in relation to schools. However, at the Hearing it was revealed by the parish representative that the nearest school, Twineham C of E Primary School, is not within walking distance and parking at the school is quite difficult, which was not disputed by the appellant. Furthermore, there is no evidence before me that the site is well served by community facilities such as a playground, a church, a post office, a village hall or a doctor's surgery.
11. There is a petrol filling station (PFS) at Hickstead services, which is some 11 to 12 minutes' walk south-east from the site, and offers a variety of food and drinks for purchase. However, the range of products is limited and is clearly aimed at the passing driver using the A23 and not as a destination where one could undertake a weekly shop. In addition, the PFS, and indeed the farm shop closer to the site, do not provide a variety of products that could otherwise be satisfied by trips to a larger, dedicated food store further afield. Moreover, I am not persuaded that the presence of the public house, burger outlet and coffee shop close to the PFS would be sufficient to compensate for trips to larger towns and villages for other services and facilities. Furthermore, notwithstanding the frequency of bus and coach services, the distance of the bus stop on the A23 for southbound services would not be an attractive alternative to using the private car. It is also unlikely that anyone with shopping, a young child, a pushchair or in a wheelchair would attempt to navigate the busy slip road of the A23 or the roundabout at the public house.
12. I acknowledge that there are businesses in the immediate vicinity, that the development also proposes business units and that the site is some 1.8km from the strategic development at Northern Arc at Burgess Hill. However, there is no guarantee that future residents would be employed at the proposed business units or by those close to the site. Furthermore, the local employment facilities identified to the east of the site are some 20-25 minutes' walk from the site and along country lanes which for the large part do not have footpaths or lighting. The distance from the appeal site makes these employment facilities unattractive to walk to, especially during the winter months, at night and during bad weather. In addition, the weather and seasons are also likely to affect travel choices to the villages of Bolney and Sayers Common.
13. Overall, given the site's location within a Category 5 Settlement and the lack of facilities and services for day to day living, the likelihood is that there would be reliance on the private motor car for the majority of trips, even allowing for the possibility of some journeys by bus or on foot. Thus, the development would be in conflict with Policies DP6 and DP21 of the MSDP and the Framework which seek, amongst other things, to ensure that developments are sustainably located to minimise the need for travel.

Other Matters

14. The Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) is a European site of nature conservation importance. It is established that any development resulting in a net increase in the number of

dwelling, without avoidance measures, would be likely to have a significant effect on the SPA/SAC within the meaning of the Conservation of Habitats and Species Regulations 2010. This effect principally derives from identified recreational pressures on the SPA associated with additional residential development and atmospheric pollution on the SAC.

15. Consequently, I must consider whether the proposal would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other plans or projects. Policy DP17 of the MSDP sets out that in order to prevent adverse effects, development within a 7km zone of influence around the SPA and SAC will be required to contribute towards mitigation through the measures set out therein. However, as the site lies beyond the zone of influence, there is not likely to be a significant effect on the SPA and SAC. In these circumstances, I do not consider it necessary to carry out an appropriate assessment or to require the mitigation contribution as set out within Policy DP17 of the MSDP and the Mid Sussex Development Infrastructure and Contributions Supplementary Planning Document 2018 (the SPD).
16. A signed Unilateral Undertaking (UU) was presented to the Hearing, which the Council acknowledged would satisfy its policies towards securing the provision of contributions towards enhancing leisure facilities and community buildings in the District (Policies DP24 and DP25 of the MSDP and the SPD) and contributions towards education (Policies DP20 and DP25 of the MSDP and the SPD). The contributions for infrastructure provision would only be necessary to make the development acceptable in planning terms and thus this aspect of the UU is a neutral factor in the case rather than a benefit. Given that I am dismissing the appeal on the substantive issues, I need not consider this matter in any further detail
17. The appellant refers to the decision at 'Trumps' and the Case Officer's report which identified the site as being "*within a sustainable location close to local services and a bus stop*". While I acknowledge the Officer's assessment of the site, I also have had regard to the Inspector's decision letter which stated that the site was somewhat remote from services and facilities, that public transport is limited and the development would have some reliance on private motor vehicles to access day to day facilities. However, he also took into account the limited number of trips associated with three dwellings, which is not the case before me.
18. The appellant also refers to an appeal decision⁶ at Fairway Golf and Driving Range, whereby the Inspector considering the development of 95 homes stated that the motorway services at Pease Pottage "*appeared to offer the availability of local convenience shopping*". While that may be the case, the motorway services at Pease Pottage include retailers such as M&S Simply Food and W H Smith and are thus, far more extensive than those at Hickstead services and are not directly comparable.
19. I acknowledge that the design of the development is acceptable, that suitable materials could be employed and the site is a windfall site. I also recognise that the buildings would be constructed to a high standard which would include sustainable construction methods and the two light industrial units have the ability to create jobs. While these matters are material considerations in

⁶ APP/D3830/A/14/2215289 dated 4 November 2014

support of the proposal, I do not consider that either individually or cumulatively they outweigh the harm identified above.

20. I also accept that the District is constrained as a result of containing areas of outstanding natural beauty, national parks and SPAs and SAC's. However, despite these constraints it is clear from the HDT that the Council has delivered on its housing requirements over the last three year period.
21. I acknowledge that the site may constitute previously developed land and that the development has the potential to enhance the immediate setting of the site. However, although the Framework advocates the reuse of such land, it must be suitable for the development. For the reasons already rehearsed, I do not find the site to be within a suitable location for the proposed development.

Planning Balance and Conclusion

22. There is a dispute between the parties in respect of the Council's five year housing land supply (5YHLS), with both parties submitting evidence to support their respective positions. On the basis of the Council's calculations, even discounting sites where deliverability has been questioned by the appellant, the Council's position is that it is nonetheless still able to demonstrate a 5YHLS.
23. I recognise that the addition of nine dwellings would boost the supply of housing in the District and support the vitality of the rural community, resulting in both social and economic benefits which weigh heavily in favour of the development. Nevertheless, the addition of nine dwellings would be a modest contribution to the supply of housing, as would the additional custom to existing services and facilities and any additional economic benefits resulting from the construction period, council tax and business rates.
24. Moreover, I have found that the proposal would be contrary to the Development Plan in that it would result in a development that is not sustainably located to minimise the need for travel, to which I afford significant weight. Thus, even if the Council is unable to demonstrate 5YHLS and the policies which are the most important for determining the appeal are out-of-date, the harm I have found is serious and, in my view, that significantly and demonstrably outweighs the benefits of the scheme when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development as envisaged by the Framework does not apply in this case. There are no other material considerations that indicate a decision other than in accordance with the Development Plan.

Conclusion

25. For the reasons given above, and having regard to the Development Plan when read as a whole, the appeal is dismissed.

Graham Wyatt

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Michael Holland
Mr Simon Bareham
Mr Joseph Pearson
Mrs Harriet Townsend

Thornton Properties Ltd (Appellant)
Lewis Planning
Lewis Planning
Cornerstone Barristers

FOR THE COUNCIL

Mr Steven King MRTPI
Mr Christopher Tunnel FRTPI
Mr Paul Brown QC

Mid Sussex District Council
Mid Sussex District Council
Landmark Chambers

INTERESTED PARTIES

Mrs Annie Hirst

Twineham Parish Council

Documents

1. Housing Delivery Test: 2018 Measurement, Published 19 February 2019
2. Policies DP15, DP18, DP20 , DP21 and DP26 of the MSDP
3. Mid Sussex Draft Housing Allocations and Draft Five Year Housing Land Supply Position calculation as at 1 April 2019 and updated on 17 July 2019.
4. Unilateral Undertaking pursuant to section 106 of the Town and Country Planning Act 1990.
5. Mid Sussex District Council's Planning Services Team email dated 17 July 2019 @12:05hrs