
Appeal Decision

Site visit made on 4 September 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2019

Appeal Ref: APP/Y9507/W/19/3221909

The Grange, Farnham Road, Liss GU33 6JE

- 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 OAA Developments against the decision of South Downs National Park Authority.
 - The application Ref SDNP/18/05031/OUT, dated 24 September 2018, was refused by notice dated 4 December 2018.
 - The development proposed is described as 'to create 7 new detached dwellings on the land known as Plot 4a'.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. During the life of the planning application, the number of dwellings to be erected was amended to five. Indeed, the description on the planning appeal form states 'outline application - 5 new detached dwellings on the land known as Plot 4a with some matters reserved - access, layout and scale (revised proposal reduced from the initially proposed scheme for 7 dwellings)'. This is reflected on the Council's decision notice. It is on the basis of the amended scheme that I consider the appeal.
3. Following the determination of the planning application and my consideration of this appeal the Council has adopted the South Downs Local Plan 2019 (Local Plan). The Local Plan supersedes the policies of the East Hampshire/South Downs Joint Core Strategy (JCS) and the saved policies of the East Hampshire Local Plan Second Review (LPSR). The Liss Neighbourhood Plan 2017 (NP) is not affected. The Council set out the most relevant policies of the Local Plan in their appeal statement. The appellant has had opportunity to comment. I have determined the appeal with regard to the development plan at the time.
1. The Council have set out, in their statement, that the appellant had submitted a Habitat Regulations Assessment due to the site falling within the 5km buffer zone of the Wealden Heath Special Protection Area (SPA) which was missed by officers at the time of the determination of the application. An Appropriate Assessment has subsequently been carried out, which concludes the proposal would not have a significant detrimental impact on the special interest of the SPA. As such, the Council no longer wish to defend the relevant reason for

refusal. I have nothing further before me to lead me to a different conclusion. I have proceeded on this basis.

2. The appeal site is an allocated site for housing in the NP. It is one 'part' of two close together, known as Site 4a or the Grange. The other, larger site is allocated for a larger development (35 dwellings) and is known as Site 4 or Upper Green. I refer to these in more detail below. The appeal scheme seeks outline planning permission with some matters reserved for consideration at this stage, those being access, layout and scale.

Application for costs

3. An application for costs was made by OAA Developments against South Downs National Park Authority. This application is the subject of a separate decision.

Main Issues

4. Taking the above into account, there are four main issues. These are:
 - Whether the proposed development would make acceptable provision for affordable housing;
 - Whether the proposed development would prejudice the delivery of allocated housing with specific regard to the NP.
 - The effect of the proposed development on the character and appearance of the area; and
 - Whether the proposed development would be acceptable in terms of its access with particular regard to visibility.

Reasons

Affordable Housing

5. Returning to the most up to date development plan situation, Policy SD28 of the Local Plan sets out the Council's stance on the requirement for affordable housing. It explains that housing schemes will be permitted that maximise the delivery of affordable housing to meet local need so long as (with regard to sites with a gross capacity to provide between 3 and 10 homes) one affordable dwelling is provided. This is a proportion based on a scheme comprising 4-5 dwellings.
6. As part of their final comments, the appellant refers to the requirements of the development plan at the time I consider the appeal, understanding that a provision for affordable housing would be necessary and that they would be willing to enter into a planning obligation to secure it. As it stands, I do not have a completed obligation before me.
7. I have given some thought to imposing a condition to require the affordable housing contribution. However, paragraph 010 of Planning Practice Guidance sets out that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers. Such a condition is unlikely to pass the test of enforceability.

8. A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Indeed, it is only 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. There is nothing compelling in the evidence to convince me that this would be the case for the proposed development.
9. With this in mind, I can only conclude that the appeal scheme would not meet the requirements of the development plan with regard to the provision of affordable housing. In the absence of a completed planning obligation there would be conflict with Policy SD28, the aims of which I have set out above.

Housing Delivery and the NP

10. Some of the Council's concerns with respect to this main issue appear to lie in the fact that, in their view, the appeal scheme would under deliver on housing in the context of the requirements of the NP and thus undermine the ability of the development plan to deliver its housing strategy. As a starting point, Policy Liss 8 of the NP sets out the plan's requirements for the allocation of land for housing. It expresses a minimum of 150 dwellings from greenfield sites in Liss and that planning permission will be granted for new residential development on listed sites. There are six sites altogether, with numbers ranging from seven to 38. On the site referred to as 'land formerly part of the Grange' (the appeal site), it says 'about 7'.
11. The first thing I notice about the numbers of dwellings on each site is that they are referred to as a minimum indicative number. A minimum is a definitive statement in my view. It infers that a number should go no lower, calling it an indicative minimum, to my mind, means just that. The minimum is not strictly a minimum. In all that is reasonable therefore, one can only conclude that the actual minimum could theoretically be something either side. There remains therefore some ambiguity as to what the expectation of the NP is in this respect. In addition, and as I have alluded to above, Liss 8's expectation for the appeal site is for 'about 7' dwellings. This adds further ambiguity as it asks for about 7, as a minimum indicative figure. This double lack of clarity is less than helpful in this particular case.
12. What is clear however, is that Liss 8 makes provision for a minimum of 150 dwellings. This is a definitive statement of an actual minimum. On this basis, one may legitimately argue that under delivery on one of more of the sites compared to the indicative minimums in each case may result in failure to reach the 150 dwelling target. There are however other factors to consider.
13. The 150 dwelling target was taken from the now superseded JCS requirement albeit the target had been carried forward by Policy SD26 of the Local Plan. The NP also sets out that the 150 was in addition to a further 136 expected to come from existing planning permissions. If the indicative minimums across the six NP allocated sites are totalled, there are 158 dwellings. That would be eight clear of the 150 minimum. This therefore adds further confirmation to me that, for want of a better way of putting it, there remains some wriggle room in the indicative minimums for each site. In essence, if it were to be accepted that the appeal site brought forward five instead of seven, there would be a two dwelling shortfall, which if that is taken off the 158 the

allocated sites could indicatively deliver, there is every possibility that the total of the Liss sites could still deliver the target as required by the NP.

14. I agree that one could consider a concession in this case on the number of dwellings on the site under the thin end of the wedge principle. I.e. that the same arguments I have set out here could be rehearsed again when looking at other allocated sites in the NP. There could therefore be a possibility that, through cumulative concessions, an eventual under delivery could occur in the lifetime of the plan. Be that as it may, I can only make a judgement on the merits of the case before me within the reasonable controls of the development plan which includes how relevant policies are worded. I am also mindful of the fact that this is the first NP allocated site to come forward and it would still be in the Council's control to consider the merits of other schemes on other allocated sites and, perhaps most importantly to this main issue, how many dwellings they deliver.
15. I note the Council's raising of the examining Inspector's findings on the NP and the reasons for factoring in the eight dwelling buffer to the 150 target. It seems to be the case that the appeal site is constrained and this seems to be one of the reasons the buffer was established albeit there remains some confusion in my mind given it appears that the Inspector was satisfied such constraints would not be a barrier to achieving seven on the appeal site.
16. Even so, I have not seen any sufficiently compelling evidence that sets out that other allocated sites would be similarly or worse constrained and thus nothing conclusive that I can see to make me conclude the other sites could not deliver or achieve their target as a minimum. It strikes me as, in the absence of anything significant to the contrary, eminently possible for the two dwelling shortfall to be made up on other sites. If it is not and the other sites deliver on their expected number, then the two dwellings would naturally be covered by the aforementioned buffer.
17. Be this as it may, I now turn to the matter of separate ownership which drove the need for a new access to the appeal site. Whilst I go into more detail on the latter with regard to the third and fourth main issues, it appears to be the case that the two allocated sites (4 and 4a) are in different ownership and that it has evidently been problematic reaching agreement over site 4a (as developed) being accessed via the existing private road that runs to the Grange and the larger site 4. As it is the case that visibility improvements were required for both the extant access¹ and the same for the appeal scheme, it would be reasonable to conclude that the same would be required for site 4 both for its own sake and if it were to be the access for 4a as well. Indeed, the NP explicitly states that improvements must be made to the access to Farnham Road.
18. What gives me cause for concern here is that with the separate ownership of the appeal site, which runs up to and abuts the northern edge of the existing private access to the Grange, it leaves any potential northern visibility splay from the existing access across land owned by the owners of the appeal site. With such land not being within the highway, there are potential problems of a splay being deliverable in reality. I note the appeal plans which identify open space maintained for possible future road improvements but this appears to be a corner of a rear garden to plot 3 of a layout that is fixed for consideration at

¹ Local Planning Authority Reference 18/00117/FUL

this stage. The existing lack of agreement over rights of access aside, I am struggling to see, based on the evidence before me, how the appeal scheme can give sufficient assurances that it would not prejudice the ability of the existing access to the Grange being improved to be suitable as one for a development of in the region of 35 dwellings. In the absence of anything giving me the level of comfort to conclude positively on this issue, I can only say that the development of the site in the manner proposed, which includes the layout shown and its own access, has the potential to constrain future improvements to the existing access to the Grange, such that it could prejudice the delivery of allocated housing on site 4. The loss of 35 dwellings to the 150 target would result in an under delivery when considered alongside the requirements of both the NP and the Local Plan's housing strategies.

19. As I alluded to earlier, there are a further 136 dwellings expected from existing planning permissions. Whilst it is reasonable to say that some of these would come forwards, they are additional dwellings on windfall sites over and above and not instead of an allocated target which, for reasons of not being able to guarantee they would come forwards, cannot be relied upon to make up a potential shortfall on allocated sites. Ultimately, allocated housing sites are those set out by the government backed plan led system to demonstrate and ensure adequate housing delivery. Windfall commitments are always over and above that delivery which will come forward on assessment of their merits in each case. To accept a potential shortfall of 35 for Liss (which is a not insignificant number in the context of the settlement's 150 dwelling target) in favour of relying on windfall sites would potentially undermine the role of the plan led approach.
20. Whilst I have found that under delivery on the smaller allocated site would not amount to a problem of significance given, amongst other things, the built in buffer in the NP. It remains my concern that the development of the site with its own access and in the manner proposed without sufficient safeguards on how the access for the larger site could be provided acceptably would prejudice the delivery of allocated housing in the NP. This would accordingly result in conflict with Policy Liss 8 of the NP and Policy SD26 of the Local Plan which together support the Council's housing strategy for the lifetime of the current development plan.

Character and Appearance

21. The appeal site is currently an undeveloped parcel of land fronting Farnham Road. It seems it was part of wider grounds belonging to the Grange, a residential care home sited further west. It is accessed via an existing private driveway that leads to the Grange. Whilst some of the boundary hedge has been removed to facilitate the development of a new access which has the benefit of planning permission, there remains a distinct rurality to its character which is verdant with tall grass and mature trees. It is on the edge of the settlement with built development to the north, east and west. Buildings are mainly low density and informal in their arrangement. Higher density and more urban form fronts Station Road to the east. The site forms one of the entrances to the settlement along Farnham Road and exists as something of a green buffer between the built up area and the countryside.
22. As I have set out, the appeal site is allocated for development in the NP and as such there is an expectation that its appearance will change at some point in

the future in that it would cease to be open and undeveloped. With that in mind, bringing forward a relatively small number of dwellings considering the overall size of the site would ensure the low density character of built form locally is maintained and with the final appearance being a reserved matter it seems possible a suitable design and combination of materials can be secured. The layout would be somewhat sub urban with detached units in large curtilages facing inwards to a central access road but there are examples of such an arrangement close by such as The Green and Bishearne Gardens. The proposed development seeks to retain and enhance the verdant character of the site through protected and newly planted trees and hedging which can be secured by planning condition.

23. The Council evidently have concerns over the effect of the new access on the character and appearance of the area and, in part, refer to the NP's development brief for the two allocated sites – 4 and 4a. There is some overlap with the second main issue here.
24. The development brief for the sites states (in regard to access) that the Grange site may (emphasis added) share an access with the Upper Green site and later that 'access is through the Grange'. For me, this isn't a sufficiently definitive stance that the access for the Grange site should be via the existing one that serves the Grange. Looking further at the NP's brief, the plan showing the two allocations shows the existing access that leads to the Grange as a 'potential vehicular access point'. This adds further support to my view that it was an aspiration of the plan at best that the access to the Grange site was as per the existing arrangements. There is no sufficiently explicit statement that it absolutely had to be for any specific reason. It falls therefore to consider an alternative on its own merits.
25. I could accept that, in order to have the appeal site as a 'gateway' to the settlement and ensure a 'discreet' development (in the words of the NP) a secondary and somewhat less obvious access would be preferred. However, the extant planning permission for the new access has secured the removal of a not insignificant amount of front boundary hedge to create a visibility splay. As such, I fail to see how much more discreet a development on the site could now be. Notwithstanding, it seems to me to be possible to still have a gateway site of some reasonable quality and a layout/density befitting of the site's settlement fringe location.
26. As I have set out above, the access arrangements in terms of how they would serve the dwellings in character terms would not be unduly harmful. With regard to the extant planning permission for an access at the same point in the road, it seems to be the case, from the evidence I have seen, that there was an intention to use it as an access to the allocated housing site. An intention that the Council were well aware of. There were no objections to the removal of a reasonable proportion of the front hedgerow and it appears the Council's highways advisors were content that visibility was sufficient. I shall come onto this in more detail in my consideration of the fourth main issue.
27. I agree with the Council that the extant scheme could reasonably be for a field access and one for a residential development would no doubt be different. However, not significantly so, particularly when considering the fact that, as an allocated site, one would always be aware of dwellings on the site assuming it would be developed be the access from Farnham Road or as per the 'shared'

arrangement. In addition, and based on what I have seen, no explicit details of the proposed surfacing of the access were advanced, considered or required by condition imposed by the Council. It strikes me therefore that the access, even if it were to be for a field, could reasonably be hard surfaced as one for a housing development may be.

28. For these reasons, the appeal scheme would not cause undue harm to the character and appearance of the area. There would thus be no conflict with Policies SD4 or SD5 of the Local Plan, the NP in respect of allocated sites 4 and 4a (which include development briefs and Policy Liss 18) or section 12 of the Framework². These policies and briefs seek to ensure that new development, housing in Liss specifically, provides a gateway and a positive contribution to the settlement, reflecting the context of the local landscape and respecting local character.

Highway Safety

29. As I have set out above, the access for the proposed development is intended to be via a new road joining Farnham Road. The Council remain concerned that the access would not provide sufficient visibility onto Farnham Road, particularly in regard to sight lines to the north where there are protected trees close to the site boundary. The proposed access would be in the same place as that which has the benefit of an extant planning permission which I have mentioned earlier.
30. The crux of the Council's concerns in respect of relying on the extant planning permission is that, primarily, the access was intended to serve a field. It would be gated and appear as such. Indeed, the Council required, by condition, a road safety audit prior to any development commencing. Whilst an application to discharge this condition is currently pending, this audit, as well as details of the design for the legal agreement for works within the highway³, have since been studied and agreed with the Council's highways advisors.
31. I am mindful of the above and the Council's stance that there would be practical problems with sight lines on the ground (whilst they may be acceptable in theory) due to the siting of the protected trees. I have to consider however that in the Council's specialist highways advisors looking at the extant scheme, and in signing off the works for the access and accompanying safety audit, that they would be fully aware of all of the constraints within the intended splays. In addition, the Council's highways advisors did not object to either the access proposals for the appeal scheme or the extant permission for the access alone.
32. Having seen both the delegated officer report and the decision notice for the extant access scheme it did appear to be the case that one of the aims of it was to simply access the field. However, there is discussion of it being for the purposes of a residential development and there is no suggestion that the Council or indeed highway advisors as I have said, found that either would be a problem in visibility terms.
33. All things considered, as well as the fact that the proposed development would be a small number of new dwellings in the grand scheme, I am satisfied that an appropriate level of visibility would be achievable from the new access to allow

² The National Planning Policy Framework 2019

³ Under Section 278 of the Highways Act

vehicles to exit onto Farnham Road safely and not endanger existing users of the road. Since highway safety would not therefore be compromised, I do not see that there would be, in regard to this main issue, conflict with Policy SD19 of the Local Plan. Along with section 9 of the Framework, this policy seeks to ensure that development demonstrates safe and efficient operation of the road network and that safe and suitable access to a site can be achieved for all users.

Other Matters

34. In regard to the first main issue, the appellant sets out an alternative to accessing the larger site but this would also rely on land in their ownership. The suggested solution being extending one of the internal estate roads within the appeal site. Be this an option, and workable though it seems to be in theory, this would still rely on land in the control of the appellant and cannot be relied upon, for me, as a suitable alternative given the same constraint applies. Put simply, there is no agreement in place to make sure this would be provided.
35. The appellant also suggests that highways advisors have said, from a technical perspective, there is no reason why both accesses could not exist together. That is to say however that theoretically the splays that would be required for both accesses could exist together. I do not dispute this, but the fact remains that the splay for the existing access to the Grange would still have to be created over land controlled by the appellant. For want of a better way of putting it therefore, we would still be presented with the same problem.

Conclusion

36. I have found that the appeal scheme would not be harmful in respect of highway safety or the character and appearance of the area. This would not however be sufficient to overcome the harm that would be caused by how the development, without appropriate safeguards, would prejudice the delivery of an allocated housing site that would also fail to deliver the required level of affordable housing. In both cases, these harms would result in conflict with the development plan. It is for these reasons therefore that, whilst having regard to all other matters raised including those by third parties, the appeal is dismissed.

John Morrison

INSPECTOR