The Planning Inspectorate

Appeal Decision

Site visits made on 22 October 2019 and 28 January 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 February 2020

Appeal Ref: APP/C1435/W/18/3197286
Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG

- 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 & Mrs Cranston against the decision of Wealden District Council.
- The application Ref WD/2016/1896/MAO, dated 29 July 2016, was refused by notice dated 20 September 2017.
- The development proposed is change of use of equestrian land to provide 10 C3 residential dwellings.
- This decision supersedes that issued on 8 February 2019. That decision on the appeal was quashed by order of the High Court.

Decision

1. I allow the appeal and grant outline planning permission for change of use of equestrian land to provide 10 C3 residential dwellings at Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG in accordance with the terms of the application Ref WD/2016/1896/MAO, dated 29 July 2016, subject to conditions 1) to 10) on the attached schedule.

Procedural Matters

2. The application was originally made in full, and for 11 dwellings, but this was changed to an outline application with all matters reserved, and for 10 dwellings. That was the basis on which the Council made the decision to refuse permission which led to the appeal.

3. Although the original Appeal Decision was made following the submission of written representations and an accompanied site visit, the redetermination was to have proceeded by way of a Hearing. This was opened on 22 October 2019 and explored the background to the reason for refusal and to the successful High Court Challenge. It transpired that significant doubt still remained as to the way forward concerning the Ashdown Forest Special Protection Area, and the doubt was more than just a difference of opinion between the Council and the appellants. The Council had been awaiting the outcome of Stage 1 to the Examination in Public of the Wealden Local Plan 2019 with the anticipation of that resolving a difference of opinion between the Council and Natural England.

4. It was agreed that having mind to the amount of time taken in discussion on the subject at the Local Plan Examination, the number of expert witnesses and their breadth of knowledge, and the fact that the Special Protection Area was the only matter of dispute at appeal, this section 78 appeal should not attempt to pre-empt the outcome of that process where the outcome was anticipated so

soon. For that reason, it was agreed that the Hearing should be adjourned pending receipt and consideration of the Local Plan Inspector's advice. No discussion had taken place on the merits of the case.

5. In the event that advice was received on 6 January 2020 and the Plan was found to be unsound with a recommendation that it be withdrawn. The Council confirmed that as their approach to the core issue in the redetermination, the matter of the Ashdown Forest Special Protection Area, had been found to be unsound, the Council's evidence to the appeal was formally withdrawn. A subsequent Statement of Common Ground set out the matters in agreement, proposed conditions and the heads of terms for a Unilateral Undertaking.

6. It was agreed with the parties that there was no need for the Hearing to be resumed and that the appeal would proceed by way of the previously submitted statements and the contents of the new Statement of Common Ground. The procedure was changed under section 319A of the 1990 Act and a further unaccompanied site visit was carried out on 28 January 2020.

Main Issues

7. These are;

- The effect of the development on the aims of policies which seek to direct the location of residential development, having mind to access to services and facilities, and visual impact.
- The effect of the proposal on the Ashdown Forest Special Protection Area.

Reasons

The Location of Development

8. Policy GD2 of the Wealden Local Plan 1998 states that outside development boundaries, development will be resisted unless in accordance with specific policies, and Policy DC17 states similar specific to housing development. Policy EN1 sets out the Council's approach to sustainable development and consideration of the location, layout and design of development, while Policy WCS14 of the Wealden District Council (incorporating part of the South Downs National Park) Joint Core Strategy Local Plan 2013 states the presumption in favour of sustainable development. Core Strategy Policies SPO1, SPO7 and SPO8 concern respectively; spatial planning objectives on the management of countryside resources; reducing the need to travel; and maintaining and where appropriate enhancing through the encouragement of growth, the effective network of villages that will continue to support the day to day needs of rural communities, and which will accommodate some additional growth where this would be sustainable.

9. Whilst the Core Strategy identifies Upper Dicker as a Neighbourhood Centre the site lies outside of any settlement boundary and is in policy terms within the countryside, and hence the proposal is contrary to Policies GD2 and DC17. The site is separated from the nearest built form of the village by intervening undeveloped land although a ribbon of development on the opposite side of the road is within the Core Area Boundary and reaches almost to the appeal site. Having mind to the 'Braintree' judgement[1], it is not possible to conclude that

[1] Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

the site is 'isolated' in the terms of Paragraph 79 of the National Planning Policy Framework.

10. The appellants have supplied details of facilities, their distance from the site and walking times. These include a primary school, dentist, public house, church, a shop and café, and various leisure facilities, with access to transport including a main line railway station at Berwick. In addition, there is some employment within the village, notably the large private school which is said to employ 300 people. Commercial premises have recently been developed to the north of the nearby A22 road to augment existing provision.

11. Notwithstanding the facilities available in the village, there would likely be a need to travel further afield for many needs, and the present level of public transport nearby is limited. The provision of additional dwellings would assist in maintaining the viability of the existing provision and may encourage improvements.

12. The Council did not raise specific objection in the Reason for Refusal over the visual impact, and the latest Statement of Common Ground accepts the findings of the original Inspector as to the spatial effect. That Decision was however quashed by the High Court and it is reasonable to consider the matter afresh regardless of the lack of objection. The indicative plans show an attractive layout and design of dwellings and the Design and Access Statement refers to features that should inform the detailed design when reserved matters are submitted. Although a separate area of development, the site is not so distant from other built form as to appear intrusive to the countryside or harmful to the character and appearance of the village, and the quality of the development as proposed would ensure that the aims of good design stated in paragraph 124 of the Framework as being a key aspect of sustainable development should be met.

13. To conclude on this main issue, the site is outside development boundaries where policies of restraint apply, but it has not been possible to identify serious harm to the aims of sustainable development, and the visual impact would be acceptable. The proposal would comply with Core Strategy Policies SPO1, SPO7 and SPO8. The planning balance will be carried out following consideration of the second main issue.

Special Protection Area

14. This was the matter on which the successful High Court Challenge was based, and on which the Council has now withdrawn all the previously submitted evidence.

15. The site is approximately 18km from the Ashdown Forest Special Protection Area and Special Area of Conservation, and could affect the integrity of the Lewes Downs and Pevensey Levels Special Areas of Conservation, the latter being also a Ramsar site.

16. Whilst agreement has been reached between the Council and the appellants, further to advice from Natural England and notwithstanding the findings of the Local Plan Inspector, an Appeal Inspector is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 and an Assessment is required. There are 7 steps to the Assessment and once one of the steps has been met there is no requirement to go on to consider the remaining steps;

Step 1, is the proposal directly connected with or necessary to the management of a protected site? No, that is not the case.

Step 2, is the proposal likely to have a significant effect on the interest features of the site, alone or in combination? The main issue is air quality and the effects of nitrogen deposition from vehicle journeys through the area. The Council had sought to provide 14,228 homes under the draft Local Plan and Natural England have confirmed in a recent statement that they have no objection to the grant of permission, being satisfied that this would not adversely affect the integrity of the Special Protection Area. With specific regard to air quality, the advice is that mitigation measures are not required for that quantum of development. As a result, it is concluded that the appeal development would not adversely impact the integrity of the protected areas, whether considered on its own or in combination with other sites.

17. As a result of this finding it is not necessary to consider the Assessment further and there is no need for mitigation measures. The appeal proposal would be acceptable in terms of its effects on the Ashdown Forest Special Protection Area, as well as on the other named sites.

Planning Balance

18. The proposal is for residential development outside of any development boundaries and in the open countryside, and hence would be contrary to Development Plan policies which seek to direct the location of development.

19. However, it is agreed that the Council is unable to demonstrate a 5-year supply of specific deliverable sites for housing, as required by paragraph 73 of the Framework and Policies GD2 and DC17 should be considered out-of-date. Paragraph 11d) of the Framework states that where the policies which are most important for determining the application are out-of-date, 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.

20. The proposal has been found to be acceptable in terms of the location and its effect on the character and appearance of the village and countryside, and the development could proceed without adverse effects on the Special Protection Area. There are no adverse effects which significantly outweigh the benefits of providing housing in this location, as demonstrated in the Reasoning to this Decision.

Conditions and Undertaking

21. These are matters of agreement between the main parties and in addition to the required conditions on reserved matters, it is reasonable and necessary to attach conditions requiring the footpath link to be provided, to control foul and surface water drainage, to secure archaeological work, to require a Construction Traffic Management Plan and measures to secure ecological improvements, and to ensure that the dwellings achieve a 33% betterment with regard to CO_2 emissions.

22. A Unilateral Undertaking dated 24 January 2020 has been agreed by the Council and makes provision for affordable housing and to limit the availability of the private dwelling units during a set marketing period to people with a local connection. Both of these provisions are in line with offers made at the

time of the original application and on which local residents were consulted and to which many gave their approval of the scheme. The affordable housing provision of 3 units is described as a slight under-provision with the remainder made up through a commuted sum.

23. The provisions of the Undertaking satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. As a result, full weight is accorded it in this Decision.

Conclusions

24. The proposal would assist the supply of housing in an area with a significant shortfall whilst being reasonably located with regard to access to services and would aid the viability of those services. The Undertaking ensures that the elements of the scheme supported by the community will be delivered, and conditions ensure that the concerns expressed in representation over drainage and construction traffic will be addressed.

25. There are no adverse effects which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework, including the statement at paragraph 59 of the Government's objective of significantly boosting the supply of housing. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place 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 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) No development shall take place until full details relating to the construction of a footpath to provide a link between the site and other footpaths along Camberlot Road have been submitted to and approved in writing by the Local Planning Authority and a licence for such works has been obtained from the local highway authority. The footpath shall be

constructed in accordance with the approved details prior to the first occupation of the development hereby permitted and shall be maintained and made available for its intended purpose thereafter.

5) No development shall take place until full details of the means of foul water drainage, including its management and maintenance, have been submitted to and approved in writing by the Local Planning Authority. The means of foul water drainage shall be completed in accordance with the approved details prior to the completion of the development hereby permitted or prior to the first occupation of the development hereby permitted, whichever is the sooner, and shall be managed and maintained in accordance with the approved details thereafter.

6) No development shall take place until full details of the means of surface water drainage, including its management and maintenance, have been submitted to and approved in writing by the Local Planning Authority. The means of surface water drainage shall be completed in accordance with the approved details prior to the completion of the development hereby permitted or prior to the first occupation of the development hereby permitted, whichever is the sooner, and shall be managed and maintained in accordance with the approved details thereafter.

7) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. A written record of any archaeological works undertaken shall be submitted to the local planning authority within three months of the completion of such works.

8) No development shall take place until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of the size of vehicles, wheel cleaning facilities, traffic management, contractor parking and compounds for the storage of plant/machinery and materials clear of the Highway.

9) The development hereby permitted shall be carried out in accordance with the precautionary measures and recommendations set out within the PJC Consultancy Extended Phase 1 Habitat Survey & Preliminary Bat Roost Assessment dated 28 April 2018 and the PJC Consultancy Bat Survey Report dated 8 June 2018. Prior to the first occupation of the development hereby permitted, details of the ecological enhancement measures set out in these documents shall be submitted to and approved in writing by the local planning authority. The ecological enhancement measures shall be implemented in accordance with the approved details prior to the first occupation of the development hereby permitted and shall be retained thereafter.

10) The dwellings hereby permitted shall be constructed to achieve a 33% betterment in regulated CO_2 emissions, compared to compliance with the Building Regulations 2010 and a water efficiency target of 95litres/property/day. No occupation of the dwellings shall be permitted until details of how these measures have been achieved have been submitted to an approved by the Local Planning Authority.