

Appeal Decision

Hearing Held on 11 February 2020

Site visit made on 11 February 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Appeal Ref: APP/N1730/W/19/3233320

Land off Holt Lane, Hook

- 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 Terence Lyons (Flavia Estates) against the decision of Hart District Council.
 - The application Ref 18/00503/OUT, dated 2 March 2018, was refused by notice dated 10 April 2019.
 - The development proposed is erection of a new veterinary practice (including ancillary overnight accommodation).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding paragraph 5.1 of the Statement of Common Ground, it was confirmed at the Hearing that the proposal has been made in outline, with matters of appearance and landscaping reserved for future consideration. The submitted plans show an illustrative front elevation, and the site layout drawings include some proposed landscaping. I have determined the appeal based on the details shown on the drawings as far as access, layout and scale are concerned. However, with regard to appearance and landscaping, I have considered the information to have been submitted for illustrative purposes only.
3. The Hook Neighbourhood Plan 2018 to 2032 (the Neighbourhood Plan) was the subject of a successful referendum on 7 October 2019. Therefore, in accordance with Section 3 of The Neighbourhood Planning Act 2017, it has become part of the development plan for the area. The Neighbourhood Plan was the subject of a legal challenge, which was unresolved at the time of the Hearing. Both parties had the opportunity to comment on the change in the status of the Neighbourhood Plan since the council's decision, and the implications of the legal challenge, at the Hearing. It was clarified at the Hearing that the legal challenge did not relate to any policies of the Neighbourhood Plan that were relevant to this appeal. The parties agreed that,

notwithstanding the challenge, the Neighbourhood Plan carried substantial weight. Soon after the Hearing was closed, the legal challenge was dismissed¹.

Main Issues

4. The main issues are:

- a) Whether the site is suitable for the proposed development, having regard to the policies of the development plan which seek to protect the countryside;
- b) The effect of the proposal on the character and appearance of the countryside; and,
- c) Whether the proposal represents an acceptable form of development having regard to flood risk.

Reasons

Suitability of site

5. The appeal site is a roughly triangular field, served by Holt Lane, on the eastern edge of Hook. There is continuous development along the opposite side of Holt Lane, to the northwest, and a sewage pumping station intrudes into the northern section of the field. Part of the southern boundary of the site is bordered by housing. The remaining land to the south, and all the land to the east, lies within Bassetts Mead Country Park. It is proposed to construct a new veterinary centre on the southern part of the site, with a carpark served by an improved access off Holt Lane.
6. It is common ground between the parties that the appeal site lies outside the settlement boundary for Hook, as defined by the Hart District Local Plan (Replacement) 1996 – 2006, which was adopted in 2002. First Alterations to the Hart District Local Plan (Replacement) were adopted in 2006, and policies from both have been saved by Secretary of State directions. The saved policies from both plans are collectively referred to as the Hart Local Plan, which will hereinafter be referred to as “the Local Plan”.
7. Policy RUR2 of the Local Plan restricts development in the open countryside, outside the defined settlement boundaries. There is no dispute between the parties that the appeal proposal is contrary to this policy. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless other material planning considerations indicate otherwise.
8. Government policy in the Framework is a material consideration that should be taken into account when determining applications and appeals. The Local Plan covered the period 1996-2006, and was adopted in 2002, so significantly pre-dates the Framework. Paragraph 213 of the Framework clarifies that existing development plan policies should not be considered out-of-date simply because they pre-date it, but due weight should be given to them according to their consistency with the Framework.

¹ Wilbur Developments Ltd, R (On the Application Of) v Hart District Council [2020] EWHC 227 (Admin) (11 February 2020)

9. The settlement boundaries that define the extent of the countryside, and therefore restrict development, were based on the development needs and aspirations at the time of adoption of the Local Plan, which is now 18 years ago. They were only intended to cover the period until 2006, so they do not reflect current housing and employment needs, or the advice at paragraph 92 of the Framework, to plan positively for the provision of community facilities and local services to enhance the sustainability of communities.
10. The appellant has referred to an appeal where the Inspector concluded that the settlement limits that informed Policy RUR2 were out of date, and therefore attached little weight to Policy RUR2 in his decision². This decision was made over two years ago, so the settlement limits are now even older. Nevertheless, at the Hearing the council referred to more recent appeal decisions, where Inspectors have afforded Policy RUR2 moderate weight. The appeal decision cited by the appellant related to a major housing led development, and the Inspector concluded that there was evidence that the council had maintained its 5-year supply of deliverable housing land by permitting residential development outside the settlement limits. The proposal for a new veterinary practice is not, therefore, directly comparable. Nevertheless, for the reasons given above, I conclude that I can only apply moderate weight to Policy RUR2, insofar as it places a blanket restriction on development in the open countryside.
11. The Hart Local Plan: Strategy and Sites 2014 – 2032 (the emerging Local Plan) is at an advanced stage of preparation. Consultation on Proposed Main Modifications took place between 5 July and 19 August 2019. At the Hearing the council advised that a report from the Inspector was expected in the next two weeks and adoption was likely in mid-April. Both parties agreed that the emerging policies carry significant weight. Neither the emerging Local Plan, nor the Neighbourhood Plan, change the settlement limit for Hook in relation to the appeal site. The council argued at the Hearing that, as the site is still identified as countryside in these more recent plans, this reinforced its view that at least moderate weight should be given to Policy RUR2 of the Local Plan.
12. However, the emerging Local Plan does not include a policy that places a blanket restriction on development in the countryside. Instead, Policy NBE1 allows for a range of categories of development to be located outside settlement limits. One such category is “*community facilities close to an existing settlement which is accessible by sustainable transport modes*”. The council suggested at the Hearing that the proposed veterinary practice would not be a community facility, as it would be a *sui generis* use, rather than a D1³ use. However, “Community Facility” is defined in the glossary of the emerging Local Plan without reference to the Use Classes Order, and the definition includes healthcare facilities and other similar uses. The proposed development would therefore broadly fit the definition of a community facility in the emerging Local Plan.
13. Whilst I heard evidence at the Hearing that Hook has limited bus services, it does have a mainline railway station providing access to London and the south and west. I also heard that cycle routes are being delivered via developer contributions from the significant housing developments that are currently taking place, or that are planned, around the village. It is therefore a

² Appeal ref: APP/N1730/W/17/3167135 paragraph 90

³ Town and Country Planning (Use Classes) Order 1987 (as amended)

settlement that is accessible by sustainable transport modes. The proposal would therefore comply with Policy NBE1 of the emerging Local Plan.

14. Policy HK1 of the Neighbourhood Plan says that the focus of new growth will be within the existing settlement boundary. However, this does not place a blanket restriction on development in the countryside. This is evident from paragraph 7.8 of the Neighbourhood Plan, which provides support for the relocation of the veterinary centre, if a suitable site with adequate access and sufficient parking can be located within proximity to the settlement area. The appeal site would fulfil these requirements.
15. In summary, therefore, the proposal would be contrary to Policy RUR2 of the Local Plan, insofar as it places a general constraint on development in the countryside. However, for the reasons given above, I only afford this Policy moderate weight in this regard. The proposal would, however, comply with Policy NBE1 of the emerging Local Plan, which the parties agree should carry significant weight. Furthermore, the principle of relocating the veterinary practice to a site in the countryside is supported by the Neighbourhood Plan. I therefore conclude on this main issue that the site is suitable for the proposed development, having regard to the policies of the development plan which seek to protect the countryside.

Character and appearance of the countryside

16. As well as placing a constraint on development in the countryside, Policy RUR2 of the Local Plan also seeks to ensure that development does not have a significant detrimental effect on the character and setting of the countryside. The council's reason for refusal did not refer to Policy GEN3 of the Local Plan, which seeks to protect the character of the landscape within Landscape Character Areas. At the Hearing, it was explained that the refusal related more to the general intrusion into the countryside, than the particular landscape character of the Whitewater Valley.
17. Nevertheless, it is common ground between the parties that the site lies within the Whitewater Valley Landscape Character Area, as defined by the Hart District Landscape Assessment (1997) (the HDLA). The site displays some of the distinguishing features of this landscape type, as it is a riverside pasture, forming part of a flat low-lying valley floor.
18. However, the HDLA also identifies this character type as having a sheltered, pastoral and rural character with few detracting influences. I saw that the site is significantly affected by built development to the southwest, where houses closely border the site, with domestic fencing forming the boundary. The buildings along Holt Lane lie close to the north-western boundary, there is a pumping station in the northern corner, and there are powerlines crossing the site. These factors give the site a distinctly urban edge character. The site is enclosed by hedges, trees and reedbeds and therefore has little visual connection with the adjacent country park or the wider countryside beyond. It therefore does not make a significant contribution to the character and appearance of the landscape character area.
19. The proposed building would be visible from London Road and Holt Lane through the widened access point, and through the boundary hedge, which does not provide a full visual screen. The hedge could be strengthened through additional landscaping, but the roof of the building would still be visible above.

Nevertheless, it would be seen in the context of existing development in Holt Lane, so would not appear incongruous.

20. There is a public footpath to the east of the site, beyond the Whitewater River. The site is partly visible from this path, but at some distance, and the proposed building would be viewed from here against the backdrop of existing development in the village beyond. It would therefore visually assimilate into its urban context, rather than appearing as an intrusion into the countryside.
21. The building would also be visible from the country park to the south, where the roof would be readily apparent over the boundary hedging. There would also be some glimpsed views of the building and car-parking through the boundary hedging, which could potentially be mitigated through additional planting. From this viewpoint, the development would be experienced from a semi-natural greenspace on the urban fringe, which is already heavily influenced by built development along its western and northern edges. The proposal would not therefore have a significant impact on the character and setting of the country park or the wider countryside beyond.
22. For the reasons given above, I therefore conclude on this main issue that the proposal would not cause undue harm to the character and appearance of the countryside. Consequently, there would not be a conflict with Local Plan Policy RUR2 which seeks to protect countryside character, or with paragraph 170 of the Framework, which recognises the intrinsic character and beauty of the countryside.

Flood risk

23. The appeal site lies close to the confluence of the River Whitewater and a tributary known as Griffin Stream. Griffin Stream runs along the north-western boundary of the site, and it is crossed by bridge accesses to the site and the adjacent pumping station, before joining the River Whitewater to the northeast of the appeal site. The River Whitewater flows on a roughly north south alignment through Bassetts Mead Country Park, just beyond the eastern boundary of the appeal site.
24. The Environment Agency's Flood Zone Map shows that an area on the southern part of the appeal site lies within Flood Zone 1, with an annual probability of flooding of lower than 1 in 1,000. The remainder of the site lies within Flood Zones 2 and 3, with the boundaries of these two zones being largely contiguous. In the absence of detailed flood modelling, Hart District Council's Strategic Flood Risk Assessment (HDCSFRA) has defined Flood Zone 3 as the functional floodplain (Flood Zone 3b). The submitted drawings show that the proposed building would be sited entirely within Flood Zone 1, but the access and much of the car-parking area would be within Flood Zones 2 and 3.
25. Government policy on development and flood risk is set out in paragraphs 155–165 of the Framework. Development in areas at risk of flooding should be avoided by applying a sequential, risk-based approach to the location of development – taking into account the impacts of climate change. Policy GEN11 of the Local Plan, which pre-dates the Framework, says that development in areas liable to flood, or which would unacceptably increase the risk of flooding on other land, will not be permitted, unless appropriate and satisfactory alleviation or mitigation measures are included. Policy NBE6 of the emerging Local Plan, which addresses the issue of managing flood risk, is

closely aligned with the advice in the Framework. It requires development proposals that are at risk from flooding to be supported by a site-specific flood risk assessment, and to comply fully with national policy, including the sequential and exception tests where necessary.

26. The appellant does not dispute that a sequential test is necessary, to demonstrate that no sites at lower risk of flooding are available to accommodate the development. The council and Environment Agency suggested three sites within the village that could be suitable: Stratfield House; Geffery's House; and Oakview House. All three sites had previously been considered in the appellant's sequential test, which examined sites within the village, and on the edge of the settlement.
27. Stratfield House is an office building that has prior approval for conversion to flats, and it is owned by a residential developer. Geffery's House is currently occupied as sheltered accommodation and, although there are plans for relocation, the evidence from the local Councillor at the Hearing indicates that this would be a lengthy process, dependant on another site being developed. It is therefore unlikely that either of these sites will become available for the proposed use in the short or medium term. Oakview House is located within the area covered by the Neighbourhood Plan's Masterplan for Hook Village Centre, where the development of new and varied shops will be supported by Policy HK2. As well as not meeting the Neighbourhood Plan's aspirations for the site, the town centre land value is likely to prove unviable for the development of a veterinary practice.
28. The appellant's analysis of other sites considered in the submitted sequential test was not challenged, and no additional sites were suggested. In the light of the above considerations, I find that the requirements of the sequential test have been satisfied. In these circumstances, paragraph 159 of the Framework says the exception test may have to be applied, depending on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Table 2 of the Planning Practice Guidance (PPG).
29. The appellant argued that Table 3 of the PPG indicates that an exception test would only be necessary if the proposed development came into the "More Vulnerable" category. Table 2 of the PPG does not classify a veterinary practice, but "non-residential uses for health services" comes under More Vulnerable. As the proposed development would be of a similar nature, and would also include ancillary residential accommodation, I conclude that it would be a More Vulnerable use, so an exception test is therefore necessary. Paragraph 160 of the Framework says that the exception test should be informed by a site-specific flood risk assessment (SSFRA). For the exception test to be passed, the SSFRA should demonstrate that:
 - a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
 - b) that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
30. The appeal was accompanied by a SSFRA, which uses published data on flooding and modelling to investigate climate change in the Griffin Stream. It

concludes that Flood Zone 3b should be restricted to an area close to the course of the Griffin Stream. Based on evidence taken from the HDCSFRA, which shows that the climate-change adjusted Flood Zone 3 will not extend beyond the current Flood Zone 2, it concludes that the proposed floor level of the building (64.40m AOD) would be over 300mm above the climate-changed Flood Zone 1 level. It does, however, acknowledge that occasional flooding will limit or prevent normal access to the building.

31. The SSFRA is based on hydrological and hydraulic modelling of the local reach of the Griffin Stream. However, it acknowledges that no detailed rainfall/flow records are available to calibrate the model, and that the modelling is not therefore sufficient to produce an updated flood map for Griffin Stream. Furthermore, no modelling of the Whitewater River has been carried out. The SSFRA states that this is because the Whitewater River presents a lower flood risk than the Griffin Stream, and its hydrology and hydraulics are very complicated. However, the confluence of these two watercourses is very close to the northern corner of the appeal site. Lack of modelling for the Whitewater River, and its interaction with the Griffin Stream, casts uncertainty on the overall conclusions of the SSFRA.
32. Moreover, the impact of climate change may have been underestimated. The SSFRA uses the 1 in 100 plus 25% level for its assessment. However, as I have found that the development would fall within the More Vulnerable category, the 1 in 100 plus 35% level would be appropriate. The appellant suggested at the Hearing that the building floor level could be raised further to provide more confidence that it would be safe from flooding. However, in the absence of modelling of the Whitewater River, and application of the appropriate allowance for climate change, I cannot be confident of the level at which the building would need to be set, to make it safe from flooding.
33. For the same reasons, I cannot be certain about the extent of the functional floodplain. The access point, and at least some of the internal access road would be located in Flood Zone 3b. The implications for access and egress from the site in a flood event could, potentially, be overcome through an approved evacuation plan. However, the full extent of Flood Zone 3b has not been demonstrated to a level of confidence, whereby I can be sure that the carpark would be entirely outside the functional floodplain. Even if the carpark was treated separately from the building, as Less Vulnerable development, Table 3 of the PPG still indicates that it should not be permitted in Flood Zone 3b.
34. Paragraph 163 of the Framework advises that SSFRAs should demonstrate that within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location. This approach has been taken by siting the building within Flood Zone 1, but it is not explained why the carpark could not also have been located outside Flood Zones 2 and 3. The appellant's Hearing Statement appended a plan showing that the building and car-parking could be contained within Flood Zone 1. However, as siting is not a reserved matter, I must consider the layout that has been submitted, which does not show the carpark in the area of lowest risk, contrary to the Framework advice.
35. For the above reasons, I conclude that the proposal would not be an acceptable form of development having regard to flood risk. The proposal would therefore be contrary to Policy GEN11 of the Local Plan and Policy NBE6 of the emerging

Local Plan, which seek to avoid development in areas liable to flood, unless it is demonstrated that it is safe from flooding. The proposal would also conflict with the advice on planning and flood risk set out in Section 14 of the Framework.

Other Matters

36. Representations have been made in writing, and at the Hearing, regarding the impact of additional traffic, and noise from the proposed use, on the living conditions of occupants of nearby residential properties. Given my findings on the third main issue, it has not been necessary for me to consider these matters.

Planning Balance and Conclusion

37. I am mindful that the existing veterinary practice occupies a confined site within the village centre, so a new site is necessary to provide the growing population of the village with a wider range of services, close to its existing clientele. The relocation would also help facilitate the Neighbourhood Plan aspiration to deliver an improved village centre, in accordance with Policies HK2 and HK3. These are benefits that weigh in favour of the development. The absence of harm in relation to the first two main issues counts neither for nor against the proposal and is neutral in the balance. However, it has not been demonstrated that the replacement facility represents an acceptable form of development having regard to flood risk. I therefore conclude that the benefits of the proposal do not outweigh the harm that would arise.
38. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick Cobbold (Bell Cornwell) – Agent
Terence Lyons (Flavia Estates) – Appellant
Simon Jones-Parry

FOR THE LOCAL PLANNING AUTHORITY:

Miguel Martinez - Principal Planning Officer, Hart District Council
Susanna Hope – Flood Risk Infrastructure Engineer, Hart District Council
Cathy Harrison – Planning Adviser, The Environment Agency
Lewis Clarke – Environment Agency
Neil Landricombe – Environment Agency

INTERESTED PERSONS:

Cllr Jane Worlock – Hart District Council
John Orchard – Hook Neighbourhood Plan Steering Group Chairman
Michael Ward – Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Statement of Common Ground dated 10 February 2020
2. Evidence relating to alternative sites; flood maps and records; and photographs submitted by the Environment Agency
3. Photographs of flooding in Holt Lane submitted by Mr Ward
4. Extract from Land Use Gazetteer and information from Hook Veterinary Centre website submitted by the council
5. Map of Public Right of Way FP6 and details of Walk D: Bassetts Mead submitted by the council
6. Extracts from Hampshire County Integrated Character Assessment (May 2012) and Hart District Landscape Assessment
7. Lead Local Flood Authority consultation reply dated 31 July 2019 relating to planning application reference 19/01581/OUT