



Appeal Decision

Site visit made on 24 August 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2020

Appeal Ref: APP/L3815/W/20/3250327

Mayfield, Prinsted Lane, Prinsted, Southbourne PO10 8HS

- 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 Mr Peter Yeates against the decision of Chichester District Council.
 - The application Ref SB/19/01859/FUL, dated 18 July 2019, was refused by notice dated 10 December 2019.
 - The development proposed is described as one self-build dwelling of architectural excellence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a planning obligation¹ in the form of an executed unilateral undertaking (UU). It seeks to address the Council's third reason for refusal which relates to the Chichester and Langstone Harbours Special Protection Area (the SPA). I deal with the SPA in the third 'main issue' below.
3. Since it made its decision, the Council is no longer able to demonstrate a 5-year housing land supply. It also considers that the proposed development is in conflict with its recent Interim Position Statement for Housing Development (the IPS). I deal with these considerations in 'other matters' below.

Main Issues

4. The main issues are whether the proposed development:
 - Would meet a recognised housing need in the countryside;
 - Is in a suitable location having regard to flood risk; and
 - Would make satisfactory provision for mitigation of impact on the SPA.

Reasons

Housing Need

5. The appeal site is a detached house and its garden which face towards the coast. On one side of it are two houses with fields beyond. On the other side is a house and beyond that (and to the rear) other housing and development in Prinsted village. The appeal proposal would sub-divide the garden and provide

¹ Section 106, Town and Country Planning Act 1990.

- a detached house to the rear of Mayfield, accessed by a separate drive and vehicular access onto Prinsted Lane.
6. It is common ground between the main parties that the appeal site is located outside of the defined settlement boundary for Prinsted village and is therefore in the countryside. On the evidence before me, I have no reason to reach a different view. I note that the Chichester Local Plan Key Policies, July 2015 (the LP) and the National Planning Policy Framework (the Framework) strictly control new housing development in the countryside, unless there is a recognised need for it. No such need has been advanced by the appellant and accordingly the appeal proposal would cause significant harm to the Council's LP housing development strategy and settlement hierarchy.
 7. Having regard to the proximity of the nearby houses to the appeal site, I accept that the proposed house would not be an 'isolated' home (Framework paragraph 79) and I appreciate that the appeal site is located 'immediately adjacent to' or 'close to' Prinsted (LP Policy 45), which is an established settlement. Nonetheless, these considerations would not outweigh the harm that I have identified above arising from the location of the appeal site in the countryside.
 8. I recognise that the LP has not been reviewed within 5 years of its adoption. However, Framework paragraph 33 requires such plans to be 'updated as necessary' and there is nothing in the Framework to indicate that the definition of settlement boundaries is no longer a suitable policy approach. In addition, Framework paragraph 213 confirms that existing development plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. The LP was adopted in the context of an earlier Framework and I consider that the relevant LP policies in this appeal are broadly consistent with the (current) Framework.
 9. I have taken account of the personal statement by the appellant, including his long association with Prinsted village, his occupation of Mayfield and family events. While I sympathise with the appellant's needs and desire to make a new start by residing in the proposed house, I have borne in mind that this development would remain long after these personal circumstances have ceased to be material. Therefore, these considerations would not outweigh the harm that I have identified above.
 10. I also appreciate that the appeal proposal is promoted as a self-build/custom house for occupation by the appellant, including to meet changing needs with age. In this regard, I note that the appellant's statement of case refers to a legal agreement but there is no such planning obligation before me. In any event, PPG confirms that the duty² to grant planning permission for self/build and custom houses relates to plots of land that are 'suitable' for housing. I have found above (and in the second main issue below) that the appeal site is not suitable for the proposed housing development and these considerations would not therefore outweigh the harm that I have identified above.
 11. Consequently, the appeal proposal would not accord with LP Policies 1, 2 and 45. These policies include locations which are to be the focus for new housing development and for housing that requires a countryside location to meet an essential, small scale and local rural need. It would also conflict with

² Paragraph: 023 Reference ID: 57-023-201760728.

Framework paragraphs 15, 20, 77 and 78. These include that the planning system should be plan-led with an overall strategy for the pattern and scale of housing development, and in rural areas should reflect local needs.

Flood Risk

12. The appellant's flood risk assessment³ (FRA) confirms that there is no flood risk from a number of potential sources, including surface water. However, it shows that a small part of the appeal site, including the proposed house, is within coastal flood zone 2, and at medium probability of flooding from the sea to a depth of approximately 1.21m, and that most of the appeal site is in coastal flood zone 3a and at high probability of flooding from the sea to a depth of approximately 2.22m. Planning Practice Guidance (PPG) confirms that the appeal site is therefore in an area at risk of flooding.⁴
13. The FRA concludes that the lowest floor level of the proposed house would be set 0.38m above the predicated flood level. Furthermore, that this part of the appeal site would provide a 'dry island' so that occupiers of the house could safely reside for the short peak duration of tidal flooding. I note that the Council's drainage engineer and the Environment Agency did not object to the appeal proposal and, on the evidence before me, I have no reason to reach a different view in this regard. However, the absence of harm in these respects does not mean that a sequential test is either not required or is overcome.
14. Framework paragraph 155 states that 'inappropriate development' in areas at risk of flooding 'should be avoided' and PPG⁵ confirms that housing is a 'more vulnerable' type of development. In addition, Framework paragraph 158 states that development 'should not be... permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding' to be established by a sequential test. The appellant's sequential test applies to a 5 mile radius around Chichester, which the appellant considers 'covers most of the district'; whereas, the Council considers that a 'district-wide approach should be taken' and that 'the majority of the Chichester District comprises land at lower risk of flooding in comparison to the application site'.
15. There is no substantive evidence before me either way to justify the main parties respective approaches. I am concerned that even if a 5 mile radius covered most of the district, it is nonetheless somewhat arbitrary to select Chichester as the centre and to limit the area to this distance. Equally, while I appreciate that the Council seeks to meet housing needs across its entire district, I note that LP Policy 4 makes housing provision for different parts of the LP plan area (ie the district) by 'sub-areas' and, in that context, a sequential test across the entire district would likely be onerous given the nature and scale of the proposed development for a single house in this appeal.
16. Notwithstanding the above, the appellant's sequential test has excluded sites that do not meet a number of very specific criteria, including that it must be of a comparable size (to the appeal site), in a location facing the waterfront at Prinsted and have adjacent equestrian land. In other words, that it must exactly match the appellant's particular housing preferences. The appellant has also discounted potential sites because they are in certain designated areas,

³ Prepared by GTA Civils Ltd.

⁴ Paragraph: 003 Reference ID: 7-003-20140306.

⁵ Paragraph: 066 Reference ID: 7-066-20140306.

such as sites within a Special Protection Area or a Conservation Area, but these designations would not in themselves be 'in principle' barriers to planning permission for a single dwelling.

17. Furthermore, there is no compelling evidence before me to suggest that the appellant could not develop a self-build or custom house of architectural excellence (or live in a house) elsewhere within the settlement boundary of Prinsted (or nearby) on land that is at lower risk of flooding, and/or that is a 'small site' and so for that reason does not otherwise appear in a list of potential housing sites in the Council's Housing and Employment Land Availability Assessment. Such alternatives would also maintain the appellant's local connection to the village.
18. Having regard to PPG,⁶ the appellant has not therefore substantiated 'local circumstances relating to the catchment area for the type of development proposed' and has not justified 'a pragmatic approach on the availability of alternatives'. The appellant's sequential test is as a result unduly constrained and so is unlikely to be representative of the full extent of potential reasonably available sites in areas with a lower risk of flooding appropriate for the proposed type of development.
19. Consequently, the appeal proposal would not accord with LP Policy 42 which seeks to avoid inappropriate development in areas at risk of flooding and to direct development away from areas of highest risk, unless it meets a sequential test. It would also conflict with Framework paragraphs 148, 155 and 158 which seeks to ensure that development takes full account of flood risk and is directed away from areas at highest risk of flooding towards areas with the lowest risk of flooding.

Special Protection Area

20. The proposed development is within a 5.6km 'zone of influence' of the SPA. Residential development would have a 'likely significant effect' on this internationally important wildlife designation for birds due to disturbance by increased human recreational activity. However, by virtue of the obligation contained in the UU (a pro forma prepared by the Council) the appellant has made a standard payment to the Council based on the number of bedrooms (thus people) in the proposed dwelling. This payment would be used by the Council for strategic access management and monitoring mitigation measures, in accordance with the 'Solent Disturbance and Mitigation Project' and the Council's 'Recreational Disturbance of Birds in SPAs' guidance, April 2020.
21. The main parties agree that the appeal proposal would not therefore adversely affect the integrity of the SPA and I note that Natural England did not object. On the evidence before me in this appeal, I have no reason to reach a different view. Furthermore, the Council considers that the UU overcomes its reason for refusal 3. I am therefore satisfied that this financial contribution is necessary, related directly to the development and fairly related in scale and kind. As such it accords with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests for planning obligations set out in Framework paragraph 56.

⁶ Paragraph: 033 Reference ID: 7-033-20140306.

22. Consequently, the appeal proposal accords with LP Policy 50 which includes that residential development should make provision for appropriate mitigation measures to avoid harm to the SPA. It would also reflect Framework paragraphs 170(a) and (d) and 175(a) which include that development should protect sites of biodiversity value, minimise impacts and be adequately mitigated.

Other Matters

23. The Council did not object to the design of the proposed house and I note that the appellant considers that it would deliver 'architectural excellence'. I accept that it would be of contemporary design and appearance, however such characteristics are not unusual or uncommon in modern housing development. Accordingly, having regard to Framework paragraphs 79(e) and 131, I consider that the design would not be of 'exceptional quality' or be 'outstanding or innovative' and would not 'reflect the highest standards in architecture' (though noting that the proposed house would not anyway be an 'isolated home' for the purposes of Framework paragraph 79). These considerations would not therefore outweigh the harm that I have identified in the first and second main issues above.
24. The appeal site is within the Chichester Harbour Area of Outstanding Natural Beauty (the AONB). Framework paragraph 172 indicates that 'great weight should be given to conserving and enhancing landscape and scenic beauty' in AONBs 'which have the highest status of protection in relation to these issues' and 'the conservation and enhancement of wildlife and cultural heritage' are also important considerations in AONBs. The Chichester Harbour Conservancy and some local residents objected to the appeal proposal, including because it would not 'conserve and enhance the landscape or wildlife of the AONB'.
25. I note that Natural England did not object to the appeal proposal having regard to its effect on the AONB; nor did the Council, including because notwithstanding its raised ground floor level the proposed house would be modest in scale (at one and a half storeys), set back a significant distance from Prinsted Lane and there would be good screening around the site such that while the proposed house (and access) would be seen in the context of the character and pattern of existing built development, it would not be prominent. I saw this at my site visit and agree with the Council in these regards. Consequently, I consider that the scale and extent of the development would be limited and it would as a result cause no harm to the landscape or scenic beauty of the AONB, or to its wildlife or cultural heritage. However, the absence of harm in these matters is a neutral factor in my decision.
26. I acknowledge that in an appeal,⁷ an Inspector granted planning permission for 199 dwellings on a site in the Council's district, outside of a defined settlement policy boundary, despite the Council being able to (then) demonstrate a 5-year housing land supply. This was partly because of an acknowledged impending 5-year housing land supply shortfall, but the Inspector also gave significant weight to the number of houses proposed, to substantial benefits of the appeal proposal and to the absence of any 'development control type' planning harm.
27. In this current appeal, it is common ground between the main parties that the Council is unable to demonstrate a 5-year housing land supply. The Council

⁷ APP/L3815/W/19/323792.

accepts that it has only a 4.3-year supply and on the evidence before me I have no reason to reach a different view in this regard. As a consequence, by virtue of footnote 7, Framework paragraph 11(d) is engaged such that the policies which are most important for determining the application are out-of-date.

28. Accordingly, the presumption in favour of sustainable development as set out in Framework paragraph 11 requires planning permission to be granted unless either to two circumstances apply. The second of these is where any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, in which case in accordance with Framework paragraph 11(d)(ii) the presumption in favour of sustainable development would not apply.
29. Albeit that the Council intends its IPS meantime to facilitate increased housing supply by permitting appropriate housing development, it is nonetheless a draft document. Though it has been subject to some public consultation it has yet to be considered by the Council's members and may therefore be subject to change. Consequently, the IPS has not yet reached an advanced stage of preparation and I therefore give it little weight in my decision.

Planning Balance and Conclusion

30. As explained in the first and second main issues above, the appeal proposal would cause significant harm to the Council's development strategy and settlement hierarchy, and to the Council's and the Government's flood risk strategy for housing development. I attach substantial weight to this harm. It would make provision for appropriate mitigation measures to avoid harm to the SPA, however the absence of harm in this regard is a neutral factor in my decision. The proposed development would not therefore accord with the development plan overall.
31. The appeal proposal would result in a net gain of one residential unit and release the appellant's existing house for occupation by another family. It would also be within walking or cycling distance of some local facilities and services, including public transport. These would be modest benefits of the appeal proposal, also mindful of the extent of the housing land supply shortfall.
32. Consequently, I find that the scale of development proposed and the identified benefits would be limited, such that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. There are no material considerations which indicate that my decision should not be taken otherwise in accordance with the development plan.
33. For the reasons given, the appeal does not succeed and planning permission is not granted.

Robin Buchanan

INSPECTOR