
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: 10 November 2020

Appeal Ref: APP/C3810/W/20/3248659

Bridge Cottage, Lidsey Road, Bognor Regis PO22 9PH

- 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 C Howard-Harris against the decision of Arun District Council.
 - The application Ref AL/75/19/PL, dated 23 August 2019, was refused by notice dated 5 December 2019.
 - The development proposed is the construction of 8 no. dwellings, alterations to access and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. With the appeal, the appellant submitted a revised proposed site plan.¹ It omits a previously proposed path along part of the appeal site boundary with the A29 Lidsey Road and includes a second path within the appeal site. The main parties have had an opportunity to comment on this plan. Having regard to the 'Wheatcroft Principles' I consider that this is a minor change to the internal layout of the development and consequently not a substantial difference. Accordingly, no prejudice would be caused to any interested party and I have dealt with the appeal on this basis.
3. The appellant also submitted a Reptile Mitigation Statement (RMS).² The main parties have had an opportunity to comment on the RMS. Having regard to the 'Wheatcroft Principles' I consider that the RMS does not result in any change to the development. Accordingly, no prejudice would be caused to any interested party and I deal with this consideration in the sixth 'main issue' below.
4. Since the appeal was lodged, the appellant has submitted a planning obligation,³ in the form of a unilateral undertaking, seeking to address the Council's reason for refusal 2 relating to the provision of infrastructure. The Council has had an opportunity to comment on the unilateral undertaking. I deal with this consideration in the third main issue below.
5. The appellant's final comments refer to an 'outline application' and to 'all matters reserved except for access'. However, the planning application form,

¹ Drawing number 1042/SK03 Revision02.

² Prepared by Lizard Landscape Design and Ecology.

³ Section 106, Town and Country Planning Act 1990.

including the appellant's description of the development, does not state that it is an outline planning application, nor has the appellant described it as such in its appeal statement of case. While there is a reference to 'outline planning application' in the Council's officer report,⁴ the Council's evidence before me is otherwise that it considered and determined the appeal proposal as a full, detailed application. I have dealt with the appeal on this basis.

Background and Main Issues

6. The appeal site comprises two detached houses and their adjoining gardens. About half of the appeal site is within the Council's Barnham, Eastergate and Westergate strategic housing site allocation 'SD5' (the strategic site) and the remainder is next to the strategic site boundary. The development would retain both houses and redevelop most of the gardens to provide 8 additional houses. Against this background, the main issues are:
- Whether the proposed development would require a countryside location;
 - Whether it would undermine the delivery of a comprehensively planned settlement in the strategic site;
 - Whether it would make sufficient provision for infrastructure;
 - Whether there would be safe and convenient arrangements for non-car travel;
 - Its effect on highway safety, with particular regard to forward visibility at the proposed access;
 - Its effect on protected species and habitat; and
 - Whether it would provide affordable housing and a mix of house sizes.

Reasons

Countryside Location

7. Part of the appeal site and the appeal proposal would be within the current strategic site masterplan boundary and the appellant seeks to justify at least some of the development for that reason. I consider this in the second main issue below. Nonetheless, part is outside of the strategic site and the appellant suggests that I should also consider the appeal proposal as a standalone development.
8. In that regard, the proposed houses would be in keeping with the general siting, layout, character and appearance of the houses on the appeal site, which is previously developed land. However, the development would be physically separate and remote from a settlement or other built-up area. While land allocated by the Arun Local Plan, July 2018 (the LP) for the strategic site is defined by the Council to be 'within the Built-Up Area Boundary',⁵ on the evidence before me no part of the strategic site and the new settlement has yet been developed. Furthermore, not all of the appeal site or appeal proposal

⁴ Page 8, last paragraph.

⁵ LP paragraph 7.2.7.

would anyway be within this built-up area boundary. The LP and the National Planning Policy Framework (the Framework) otherwise strictly control housing development in the countryside, outside of built-up areas, unless there is a recognised need for it. No such need for any part of the development to be in a countryside location has been advanced by the appellant.

9. Consequently, the appeal proposal would cause significant harm to the countryside as a matter of principle. It would not accord with LP Policy SD SP2,⁶ which includes that development should be focussed within the built up area boundaries of the main towns and villages in the Council's district. It would also conflict with Framework paragraphs 77, 78, 79 and 170(b). These include that housing development in rural areas should reflect local needs, enhance or maintain the vitality of rural communities or meet an essential need for a rural worker and recognise the intrinsic character and beauty of the countryside.
10. A standalone development would also cause harm for the reasons explained in the fifth, sixth and seventh main issues below.

Strategic Site

11. Strict adherence to the current strategic site masterplan boundary would, in this appeal, leave two small pockets of undeveloped land on the appeal site. This would serve no useful planning purpose. Accordingly, I consider that the entire appeal site could be developed as part of the strategic site, as the appellant also suggests and I note that the Council does not disagree in this regard.
12. In LP Policy H SP1 development of the strategic site is to include at least 2,300 new homes, and will also include retail, commercial and community uses and associated infrastructure (LP Policies H SP2 and H SP2c). Development must be 'comprehensively planned', should have 'regard to the masterplan' and 'must demonstrate compliance' with a number of key design and infrastructure requirements. These include appropriate design, connectivity by walking, cycling and public transport to existing or new village centres, to protect biodiversity and publicly accessible open space.
13. Development of the strategic site may not necessarily require a single development or developer. Nonetheless, having regard to the above LP policies, and in the interests of good planning, it is necessary for any constituent though separate elements of a greater development to be well-coordinated, timely, compatible and contribute in an appropriate and meaningful way to the delivery of the strategic site and new settlement. This includes with regard to required infrastructure, non-car travel, means of access, protected species, affordable housing and housing mix.
14. However, the strategic site masterplan is at a draft stage, subject to revision following consultation. Currently, part of the appeal site is shown for an unspecified use (as 'additional land') and the Council's intention for some land next to it is not yet confirmed (at present 'employment use'). Nor is there any compelling evidence before me that the appeal site should or would be identified individually for housing use, or as part of a wider parcel of land or

⁶ Provided in the Council's appeal questionnaire.

phase of housing development, in any final masterplan. In addition, there is no substantive evidence before me on the anticipated timing of development in the strategic site or about any other development that might already be approved in the strategic site.

15. Consequently, there is a significant degree of uncertainty. It is possible that the Council may wish to adopt a different final form of masterplan, including with regard to what it seeks to achieve on the appeal site and on the land next to it in the strategic site. Whilst the appeal proposal would be a relatively small, peripheral part of the strategic site and a comparatively small number of homes, granting planning permission meantime would not therefore ensure that it would integrate successfully with the remainder of the strategic site and would as a result likely have an unsatisfactory prejudicial influence on the planning and layout of at least some of the strategic site.
16. Furthermore, and irrespective of any particular proposals for the majority of the strategic site, I am concerned about the effect of the appellant's piecemeal approach to development of just the appeal site in the context of the strategic site. Such a limited instalment and reasonably low density of development would not likely result in effective delivery of housing, including because it would circumvent satisfactory provision of infrastructure, affordable housing and housing mix in the strategic site (see the third and seventh main issues below). It would also not include satisfactory provision for travel by non-car modes or means of access, including to the rest of the strategic site (see the fourth and fifth main issues below). Accordingly, this would be at odds with the Council's objective to create 'balanced and sustainable communities', including homes to meet its identified housing needs.
17. Considering the above, I consider that the appeal proposal would be premature and unwarranted — it would not reflect a genuinely plan-led approach to the appeal site, or to the strategic site. It would therefore unduly frustrate the holistic aims of the Council's planning and housing strategy in this regard, including for high quality design, a sense of place, permeable layout, appropriate integration with surrounding communities (including by non-car modes of transport) and required infrastructure.
18. Consequently, the appeal proposal would undermine, and so cause significant harm to, the delivery of the strategic site and a comprehensively planned new settlement. It would not accord with LP Policies D DM1, H SP2, H SP2c, OSR DM1(2a) and W DM2. These policies include that development in the strategic site should incorporate high quality imaginative design giving a sense of place and a permeable layout, integrate with surrounding communities through appropriate design, contribute to open space provision and other required infrastructure, make the best possible use of land and density of housing should make an efficient use of land.
19. It would also be contrary to parts of the Council's emerging 'High-Level Development Principles'⁷ for development of the strategic site — namely SDP1 (access and strategic movement), SDP4 (pedestrian and cycle links), SDP6 (housing mix, density and capacity), SDP7 (place-making), SDP8 (allocations design guidelines) and SDP12 (integration with established communities). It would also conflict with Framework paragraphs 15, 20, 72, 124 and 127 which

⁷ As reported by Officers to the Council's Planning Policy Sub-Committee, 25 February 2020.

include that addressing housing needs should be plan-led, with an overall strategy for the pattern and scale of housing development, and seek to ensure that larger scale development, such as a new settlement, is well designed and results in high quality places to live with an appropriate amount and mix of development.

Infrastructure Provision

20. The appellant's unilateral undertaking (UU) aims to secure financial contributions sought by the Council for the provision of early years, primary, secondary and sixth form education, and for provision of highways, library, fire and NHS services. On the evidence before me, these contributions would be used to meet needs arising from the appeal proposal on the basis that it would also be part of the strategic site. The appellant agrees to these contributions. I have been provided with the Council's detailed calculation methodology and written justification for these contributions.⁸ I am therefore satisfied that these obligations are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in Framework paragraph 56.
21. The appellant has not indicated a willingness to provide a financial contribution to towards the provision of community and leisure facilities (open space and equipped play areas) elsewhere in the strategic site. I appreciate that the appellant seeks to distinguish that only part of the appeal proposal would be 'in' the current strategic site masterplan boundary, and that if considered as a standalone development it would not trigger this need to be met on or off-site, but this would be incompatible with the appellant's view that in this appeal I should also reasonably regard the appeal proposal to be part of the strategic site. In which case, it would likely generate additional need for these facilities and future occupiers would likely benefit from open space and/or equipped play areas elsewhere in the strategic site.
22. However, I have not been provided with any detailed evidence about the extent of the required open space or equipped play areas in the strategic site, nor to show how a financial contribution would be spent or any methodology or calculation to justify a level of contribution. Accordingly, I cannot be certain that a contribution would be necessary to make the development acceptable or that it would be directly related to the development and fairly and reasonably related in scale and kind. Consequently, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in Framework paragraph 56. In these circumstances, the absence of an obligation for open space and equipped play areas does not weigh against the appeal proposal.
23. Notwithstanding the above, I do however have some concerns about the UU itself, including whether the Council could rely on it to secure contributions. For example, it is dated but is not signed by all of the parties, it defines a 'Pagham Harbour' Special Protection Area (SPA) but contains no obligations in this regard and it defines a 'Plan' but no plan is attached to the UU.

⁸ Written CIL Justification', 6 August 2020 - prepared by West Sussex County Council; and, 'Specific Application Note', 2 December 2019 - prepared by the NHS Coastal West Sussex Clinical Commissioning Group.

24. Consequently, I am not satisfied that the UU would make sufficient provision for infrastructure. It would therefore cause significant harm to meeting needs arising from the appeal proposal and development of the strategic site. It would not accord with LP Policies H SP2, H SP2c, and INF SP1. These policies include that development should provide or contribute towards required infrastructure and services needed to support the appeal proposal and development of the strategic site, on or off-site. It would also conflict with Framework paragraphs 8 and 72 which seek to ensure that development is supported by the necessary infrastructure and facilities to help meet identified needs in a sustainable way.
25. There is no other evidence before me in this appeal with regard to a Pagham Harbour SPA. However, in light of my concerns with the UU and my findings in the other main issues, I have not pursued this matter with the main parties and I do not need to consider it further.

Non-Car Travel

26. The A29 Lidsey Road has a 50mph speed limit past the appeal site, which is on a tight curve in an 's' bend. I saw that it is a busy road with traffic moving at reasonably high speed whereas pedestrians and cyclists entering the road from the proposed access would be relatively slow moving. There are bus stops in either direction along the road, but these are over 100m from the appeal site and are not connected to it by any pavements. Furthermore, there is no street lighting, only a narrow verge and there are nearby vehicular access points onto the A29 which adds to the complexity of vehicle movements in the vicinity of this already hazardous 's' bend.
27. The proposed layout includes a path that would connect to a public footpath that links to Barnham village, which has a range of facilities and services including public transport. However, Barnham is a significant distance away and the public footpath is mainly narrow, unsurfaced, not lit and part is used by vehicles, including commercial vehicles. Another proposed path would connect to farmland next to the appeal site and therefore have no useful purpose meantime. Nor is it certain that it would provide a meaningful link to any final form of masterplan for the strategic site and future land uses next to the appeal site, including because this land is in third party ownership.
28. Considering the above, the appeal proposal would not provide safe or convenient means for non-car travel by pedestrians or cyclists, in particular for the elderly, children and people with disabilities. I appreciate that the appellant suggests that 'a package of measures' and/or a travel plan could be offered to future occupiers of the proposed houses, including 'to promote the use of alternative methods of transport' to the car. However, for the reasons explained above, the measures for cycling and walking referred to by the appellant would not be suitable or acceptable (except perhaps the use of the public footpath for recreational or leisure purposes).
29. Consequently, the appeal proposal would not provide safe or convenient means for non-car travel and would cause significant harm to highway safety, having regard to access to and from goods, services, local facilities, schools and employment. It would not accord with LP Policies H SP2a and j, T SP1 and T DM1. These policies include that development should be designed to reduce the need to travel by car and integrate appropriately with surrounding

communities, amenities and facilities, including public transport, by safe pedestrian and cycle access.

30. It would also conflict with Framework paragraphs 108(a) and (b), 109 and 110(a), (b) and (c) which seek to promote sustainable transport modes, ensure safe and suitable access for all users, give priority to pedestrian and cycle movements, facilitate access to public transport, address the needs of people with disabilities and reduced mobility and minimise conflicts between pedestrians, cyclists and vehicles.

Highway Safety

31. The appeal proposal would reduce the number of vehicular accesses at the appeal site from three to one, would not generate unacceptable levels of traffic and, on the evidence before me, would have satisfactory visibility splays in both directions for vehicles leaving the appeal site using the proposed access. The main parties agree that the required stopping sight distance (SSD) for northbound vehicles, approaching a car stopped on the A29 waiting to turn right into the proposed access, is 67 metres. On the evidence before me I have no reason to take a different view.
32. While some waiting cars may be stopped towards the centre line of the carriageway, it is possible that some would be further away and as a result the SSD not achieved. In addition, it would also not be achieved if a waiting car stopped slightly further around the bend in the road. This is also largely a matter of driver behaviour and/or dependant on circumstances and road conditions at any given time. I therefore consider that both scenarios would be a realistic possibility. Either way, the A29 at this point is already an appreciable hazard to road users and even a small reduction in the SSD would therefore be significant. Furthermore, I would expect motorcycles and cycles to occupy similar waiting position in the road and so these road users would also be at risk of accident and injury.
33. Moreover, the SSD is also reliant on the visibility splay being within land maintained as public highway. The appellant has assumed that because its topographic site survey plan shows an adjoining property boundary further away from the carriageway edge, than does an Ordnance Survey plan obtained from the Highway Authority (HA), it must follow that the extent of the public highway remains coincidental with the property boundary as shown in the appellant's plan. I note that the appellant's plan shows a single property boundary line, whereas this boundary includes 'a low brick/flint wall' and 'a low wall with a fence mounted onto it'. It is not therefore clear which boundary feature the appellant has shown relative to the SSD visibility splay.
34. I also note that the HA plan used by the appellant for this comparison states that 'the extent of the highway, may be taken from a number of sources' and this plan 'should be regarded as guidance only'. The HA evidence contains a different plan of the public highway, which includes some dimensions to different nearby property boundaries. On the basis of this plan, a second HA plan shows that the SSD visibility splay would require land not maintained as public highway. This suggests that it may not be reasonable to extrude or extrapolate the extent of the public highway in the manner that the appellant has, and on that basis the SSD would not be achieved across land maintained as public highway — it would be substantially less, by between 15 to 20 metres according to the HA.

35. Considering the above, and that achievement of the SSD turns on such fine margins in this appeal, the appellant has not substantiated that the SSD visibility splay would be within land maintained as public highway, but even if it was, it would be dependent on, and require, an unreasonably high degree of driver precision.
36. Against this background, and on the evidence before me, I consider that there is a likelihood that the appeal proposal would cause significant harm to highway safety, having regard to forward visibility. It would not accord with LP Policy T SP1 which includes that development should provide safe access on to the highway network. It would also conflict with Framework paragraphs 108(b), 109 and 110(c) which seek to ensure safe and suitable access for all users, minimise conflicts between pedestrians, cyclists and vehicles and avoid unacceptable impact on highway safety.

Protected Species and Habitat

37. I appreciate that the main parties consider that the appellant's RMS contains suitable mitigation for loss of reptile habitat and suitable measures to avoid harm to (any present) reptiles during site clearance and development, and that it therefore overcomes the Council's reason for refusal 6.
38. However, I note that the appellant's Preliminary Ecological Appraisal⁹ (PEA) found that 'all suitable reptile habitat on site is likely to be lost' and recommended 'a full reptile survey... to ascertain the presence/absence and numbers of any reptile species present' prior to development beginning on the appeal site. Furthermore, that the Council previously agreed that a 'reptile activity survey' was required 'to determine if reptiles are on site' and that 'both the reptile activity survey and the mitigation strategy (if required)' would need to be submitted 'prior to determination' of the appeal proposal.
39. In light of the PEA, and the evidence before me in this appeal, I consider that there is a reasonable likelihood of reptiles being present on the appeal site. All UK reptiles are a protected species.¹⁰ Circular 06/2005¹¹, paragraph 99, states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision'.
40. The Council has suggested a planning condition so that prior to the commencement of development a 'schedule of works', including for reptiles, is submitted to the Council for approval based on the recommendations in the PEA and RMS. But, the appellant has not (and despite such a condition, would not have) ascertained the presence or otherwise of reptiles on the appeal site by any reptile activity survey prior to planning permission. Furthermore, the RMS is not informed by any reptile activity survey and it cannot therefore

⁹ Prepared by Lizard Landscape Design and Ecology.

¹⁰ Wildlife and Countryside Act 1981.

¹¹ Circular 06/2005: Biodiversity and geological conservation – statutory obligations and their impact within the planning system.

reasonably be concluded with any certainty that the mitigation proposed is suitable.

41. Considering the above, I consider that there is a realistic prospect that the appeal proposal would cause significant harm to protected species (reptiles) and habitat. It would not accord with LP Policies ENV DM5 and H SP2. These policies include that development proposals should contain a detailed survey of the protected species and, in the first instance, seek to protect existing habitats on site. It would also conflict with Framework paragraphs 170(a) and (d), and 174 which seek to protect sites of biodiversity value and to ensure that development avoids significant harm to biodiversity or is adequately mitigated or compensated.

Affordable Housing and Housing Mix

42. As a standalone development of 8 market houses there would be no conflict with LP Policy AH SP2 because this policy seeks provision of affordable housing in development of 11 units or more; it is therefore a neutral factor in my decision. I consider that the proposed mix of dwelling sizes — two each of 2, 3, 4 and 5 bedroom houses — would be a satisfactory range and therefore not in conflict with LP Policy H DM1.¹² Any alternative 'balance' of dwelling sizes that might otherwise be informed by the Council's Strategic Housing Market Assessment would only apply to development of 11 units or more. This would be a moderate benefit of the appeal proposal.
43. However, the Council's emerging High Level Development Principles anticipate 'design codes' for areas within the strategic site (SDP8) and that 'the allocation' ie the entire strategic site 'will provide a range of housing types to meet current and anticipated future housing need'. Furthermore, that 'the development' ie of the entire strategic site 'will provide 30% of all new homes as affordable homes... subject to viability' (SDP14). In this context, and having regard to the second main issue above, there is no viability evidence before me to suggest that the appeal proposal should not provide affordable housing on-site, or off-site by an appropriate level of financial contribution.
44. Granting planning permission on land in the strategic site for individual small scale, relatively low density housing development in isolation would circumvent the thresholds of the Council's policies that are designed to ensure a satisfactory number, type and mix of housing, including affordable housing, consistent with Framework paragraphs 59 and 61. It would therefore be averse to meeting housing needs of the new community in a comprehensive, balanced way and would likely have a significant cumulative harmful effect on the Council's LP policy objectives for the strategic site, as I have found in the second main issue above.

Other Matters

45. A visibility sightline from the proposed access, local flooding and the biodiversity potential of the nearby former Portsmouth and Arundel Canal were matters of concern to some interested parties. However, I note that the Council — including as advised by West Sussex County Council, Southern Water and the Environment Agency — did not object to the appeal proposal for any these

¹² Provided in the Council's appeal questionnaire.

reasons, including subject to suitably worded planning conditions were planning permission to be granted. On the evidence before me, I have no reason to disagree.

46. The appellant considers that the Council can only demonstrate a 3.7-year housing land supply.¹³ This would be consistent with the Council's evidence on housing land supply in a recent appeal decision.¹⁴ However, in that appeal, I note that the Inspector concluded that the Council was actually able to demonstrate a supply of approximately 2.9-years. This is not disputed by the Council in this current appeal and, on the evidence before me, I have no reason to reach a different view. The Council cannot therefore presently demonstrate a 5-year housing land supply. 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.
47. Accordingly, the presumption in favour of sustainable development as set out in Framework paragraph 11 requires planning permission to be granted unless either of two circumstances apply. The second of these is where any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against 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.

Planning Balance and Conclusion

48. As explained in the main issues above, the appeal proposal would cause significant harm to the countryside and to the delivery of the strategic site for a comprehensively planned new settlement, including the provision of infrastructure. In addition, it would not provide safe or convenient means for non-car travel or for safe access, so would cause significant harm to highway safety and would also cause significant harm to protected species and habitat. I attach substantial weight to this harm. As a standalone development the appeal proposal would result in 8 new homes and provide a satisfactory mix of market house sizes, also mindful of the extent of the housing land supply shortfall. These would be modest benefits of the appeal proposal. The proposed development would not therefore accord with the development plan overall.
49. Consequently, I find that the scale of the development proposed and the identified benefits would be limited, such that the adverse impacts of granting planning permission would significantly and demonstrably outweigh those benefits. There are no material considerations which indicate that my decision should not be taken otherwise in accordance with the development plan.
50. For the reasons given the appeal does not succeed and planning permission is not granted.

Robin Buchanan

INSPECTOR

¹³ Council's Planning Policy Sub-Committee report, 17 December 2019.

¹⁴ APP/C3810/W/19/3243619.