
Appeal Decision

Site visit made on 8 December 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 January 2021

Appeal Ref: APP/Y9507/W/20/3258528

Fernhurst Place, The Cylinders, Fernhurst, Haslemere GU27 3EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs J Oliver against South Downs National Park Authority.
 - The application Ref SDNP/20/02266/FUL, is dated 28 May 2020.
 - The development proposed is the demolition of existing dwelling and the erection of 4 dwelling houses and outhouses.
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Decision

1. The appeal is dismissed and planning permission is refused.

Main Issues

2. The main issues are:
 - The effect of the development on the character and appearance of the site and the surrounding area, including the South Downs National Park (The SDNP) and the effect on trees at the site,
 - Whether the housing mix would meet local housing needs,
 - Whether the proposed development makes appropriate provision for affordable housing,
 - The effect of the development on the living conditions of the occupiers of 14 Midhurst Road with particular regard to privacy and outlook,
 - The effect of the development on protected species, and
 - The effect of the development on highway safety.

Reasons

Character and Appearance

3. Midhurst Road is the main route passing through Fernhurst and has substantially changing character along its length, with the area surrounding the appeal site featuring dwellings of varied scale and design, some of which are accessed from the main route and others which are accessed from side roads such as The Cylinders. Although the arrangement of dwellings in the area around the appeal site is largely irregular, most dwellings are set well back from the roads and are surrounded by substantial trees, hedges and other vegetation which creates a verdant residential environment. The site and the surrounding area lie within The SDNP where the National Planning Policy Framework (The Framework) states

that great weight should be given to conserving and enhancing landscape and scenic beauty.

4. The appeal site features a large dwelling in substantial grounds that host two large oak trees, one of which is the subject of a Tree Preservation Order. Fencing and a group of tall trees at the Midhurst Road frontage, which are the subject of an area tree preservation order, mostly restrict views into the site from that road. Hedges and other trees of varying density are present at the other boundaries and, as such, the building at the appeal site is of limited prominence in the locality and sits comfortably within the context of the surrounding area.
5. The four proposed dwellings would represent a substantial increase of built form at the site which would be arranged around a shared courtyard with limited gaps between the buildings. The dwellings on plots 1 and 2 would be particularly close to the side boundary and the dwelling on plot 1 would be very close to the crown of an oak tree. As a result, the built form would appear compressed at the central part of the plot in a manner that would not reflect the pattern or character of development within the locality. The visual effect of this would be heightened by the dominance of hardstanding within the proposed public domain of the site. Although there would be pockets of grass around the abovementioned hardstanding, this would not be sufficient to prevent the buildings and hardstanding dominating the appearance of the site in a manner that does not reflect the verdant character of the surrounding area.
6. The proposed dwelling on plot 4 would be in close proximity to the crown of the protected oak tree and some of the proposed hardstanding would sit under the crowns of the two oak trees, as does some of the existing hardstanding and a retaining wall. In order to provide working space around the proposed dwelling, the submitted plans show that the protected oak tree would be reduced, thereby unbalancing the tree in a manner that would detract from its appearance. Furthermore, there would be continuing pressure to reduce that tree to maintain clearance from the proposed dwelling. If the development were acceptable in all other respects, a condition could have been imposed to address a number of matters relating to the effect on the oak trees at the site. However, the proposal would be dependent on works that would detract from the appearance of the protected oak tree and its contribution to the site and the locality. Consequently, the proposal would not conserve and enhance the tree or include a sufficient protection zone or buffer to take account of future growth, contrary to the requirements of Policy SD11 of the South Downs Local Plan 2014-33 (adopted 2019) (The SDLP).
7. The distance of the proposed dwellings from the group of trees at the Midhurst Road frontage provides comfort that those trees would not be unacceptably affected by the development and there would not be undue pressure to reduce those trees. However, this does not alter my assessment in relation to the abovementioned oak tree.
8. Policies SD4 and SD5 of The SDLP, together, require that development is landscape-led, being informed by the landscape context and integrating, respecting and being sympathetic to local character. The supporting text to Policy SD5 includes a definition of landscape in its widest sense which encompasses all types and forms, including townscape. In this regard, the layout of the development and the relationship with the trees at the site would not be reflective of a development that is landscape led and, as such, the development would neither conserve nor enhance the townscape at this part of the National Park. The development not having an effect on the rural landscape or scenic beauty as a result of its position within the settlement does not alter my assessment of the effect of the

development on the verdant townscape that the appeal site is part of and the contribution that this makes to the varied landscape of the National Park as a whole.

9. Although the effect of the group of dwellings would cause harm as identified above, when considered individually, the dwellings would not be so large that they would appear incongruous in the context of the varied scale and appearance of the dwellings of the surrounding area. In this regard, whilst two of the dwellings featuring accommodation over three floors would conflict with Policy DE4 of the Fernhurst Neighbourhood Plan 2016 (The FLP), the top floors would be within the roofspace of the respective buildings, which would be of similar height to the other proposed dwellings and others within the locality. Consequently, the provision of a third floor of accommodation within the building would not, in itself, cause harm to the character and appearance of the area.
10. The dwellings being arranged to face away from Midhurst Road would not be unlike the other built form within the surrounding area which presents few active frontages to the public domain. Moreover, I recognise that the development could incorporate materials that would reflect the locality and find that the elevations without windows would be positioned sufficiently discreetly at the site to not detract from the overall appearance of the development. However, the proposal being acceptable in those respects does not lead me to a different conclusion in relation to the overall effect of the development on the character and appearance of the site and the surrounding area.
11. The appellant has suggested that increasing the number of dwellings at the site should, by definition, be considered an enhancement that accords with Policy SD4 of The SDLP. However, I do not share that interpretation of that policy and find its aim relates to character and appearance rather than indicating that all developments that increase the number of buildings at a site should be supported.
12. For the reasons given above, the development would have an unacceptable effect on the character and appearance of the site and the surrounding area, including The SDNP and have an unacceptable effect on trees at the site. The proposal would, therefore, be contrary to Policies SD1, SD4 and SD5 of The SDLP which, in addition to the abovementioned requirements relating to the SDNP, require that development conserves, enhances, respects and complements local character and contributes to local distinctiveness. The development would also conflict with the abovementioned requirements of Policy SD11 of The SDLP. Furthermore, the proposal would be contrary to those parts of The Framework which, in addition to the requirements set out above, state that developments should add to the overall quality of the area, be sympathetic to local character and establish or maintain a strong sense of place.

Housing Mix

13. Policy SD27 of The SDLP sets out targets for the mix of housing that would be delivered within residential developments, with a clear focus on dwellings with 3 or less bedrooms. Whilst this is identified as being a broad mix and need not therefore be followed rigidly, the dwellings proposed within the development would not accord with the aim of Policy SD27 to deliver a balanced mix of housing to meet projected future needs of the local area.
14. Notwithstanding the above, Policy SD27 identifies that an alternative mix may be supported where it is necessary to meet the first purpose of the National Park or where robust evidence is provided to demonstrate that the development would meet a local need.

15. Whilst the appellant has challenged the Authority's assessment of the existing housing stock, minimal evidence has provided that demonstrates that the existing stock of housing or the housing need of the area is different to that which has been identified by the Council. Accordingly, compelling evidence has not been provided that Policy SD27 is not reflective of local housing need. Moreover, given my findings in respect of the effect of the development on The SDNP, I am not persuaded that the alternative housing mix is necessary to enable the development to accord with the first purpose of designating the national park.
16. Policy H1 of The FNP requires that at least 80% of new dwellings are suitable for occupation by older persons, thereby requiring those dwellings to accord with Lifetime Homes standards and have three or less bedrooms. Each dwelling would have more than three bedrooms. Therefore, regardless of whether the proposal would comply with Lifetime Homes standards or any standards that have replaced them, the proposal would not accord with the abovementioned policy.
17. The appellant suggests that a policy compliant housing mix would not be viable. However, a detailed financial appraisal of the development has not been provided with the appellant instead relying on generalised estimates of the costs of the development and those associated with the existing site being vacated and made available for development. The Framework and Planning Practice Guidance (The PPG) states that viability assessments should have regard to the viability evidence that underpinned the development plan, but no such assessment has been provided. Moreover, whilst the appellant suggests that such information should not be required, the application has not been accompanied with a viability appraisal that reflects the guidance contained within The PPG, which The Framework states should be adhered to. Paragraph 57 of The Framework states that the weight to be given to a viability assessment is a matter for the decision taker and, for the reasons set out above, I find that the viability evidence before me is not compelling and should be afforded very little weight. Consequently, this does not lead me to conclude that the housing mix should be found acceptable.
18. The Framework states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. Therefore, whilst the appellant has suggested that policies that restrict the mix of housing should be considered to be flawed as they restrict opportunities to make efficient use of land, I find that the policy is consistent with The Framework and should be afforded full weight. Moreover, even if I were to agree that the price of larger homes demonstrates that they are in demand or needed, this does not demonstrate that there is not an even greater need for smaller housing which the development plan seeks to deliver or that such housing should only be brought forward on greenfield sites. Similarly, whilst the appellant has suggested that parts of a family can combine to make a larger house financially obtainable, I have no basis to conclude that this is reason to support a mix of housing being provided that does not accord with the abovementioned policy.
19. Whilst the appellant identifies a growing need for space to be provided to enable for working from home, each of the dwellings is shown to have four bedrooms plus ample other space to enable working from home. As such, I have no reason to conclude that additional bedrooms are needed to meet such requirements or that only dwellings with four or more bedrooms would be in need of such space. These factors do not, therefore, lead me to find that the mix of housing sought by the development plan is not reflective of local needs.
20. For these reasons, the proposed development would not provide a mix of housing that would meet local housing needs and would, therefore, be contrary to Policy SD27 of The SDLP. In turn, the proposal would not accord with Policy SD1 of the

SDLP which seeks to foster the social well-being of local communities. The proposal would also be contrary to the abovementioned requirements of Policy H1 of The FNP. Not providing housing that meets identified local needs also conflicts with the abovementioned aim of The Framework.

Affordable Housing

21. Policy SD28 of The SDLP identifies that a development of four dwellings should include at least one affordable home, although a financial contribution towards off-site provision may be accepted in lieu of an on-site provision in exceptional circumstances. The proposed development would not make any provision towards affordable housing and would not, therefore, accord with the requirements of Policy SD28.
22. Paragraph 62 of The Framework states that, where a need for affordable housing is identified, planning policies should specify the type of affordable housing required and expect that requirement to be met on-site unless an off-site provision or an appropriate financial contribution in lieu can be robustly justified and such an approach contributes to the objective of creating mixed and balanced communities. As the proposal would not deliver a mix of housing that reflects the policies of the development plan, I am not persuaded that the proposal would contribute to the creation of a mixed and balanced community and, for the same reasons set out above, the viability evidence is not sufficiently robust to be afforded more than very little weight. Consequently, the evidence provided relating to viability does not lead me to conclude that the absence of affordable housing should be found acceptable.
23. For the reasons given above, the proposed development would not make appropriate provision for affordable housing. The proposal would, therefore, be contrary to Policy SD28 of The SDLP which requires that the delivery of affordable housing is maximised to meet local need. In turn, the proposal would not accord with the abovementioned aim of Policy SD1 of the SDLP.
24. Moreover, whilst The FNP does not address developments of less than 5 houses, the proposal would be contrary to Policy H2 of The FNP which states that affordable housing will be sought in line with strategic policies and national guidance. The proposal would also be contrary to the guidance contained within the South Downs National Park Authority Affordable Housing Supplementary Planning Document (2020) and abovementioned aims of The Framework.

Living Conditions

25. The dwellings on plots 1 and 2 would be built in close proximity to the boundary that is shared with 14 Midhurst Road with first floor windows on elevations facing that boundary. Although the dwelling on that plot is positioned away from the shared boundary, the occupiers of the proposed dwellings would have clear views towards the private rear garden area, including the outdoor sitting area to the rear of the conservatory at the side of that dwelling. Consequently, the proposal would cause an unacceptable loss of privacy within the neighbouring property which would not be mitigated by the intermittent trees and other vegetation along that boundary.
26. Whilst the appellant has submitted details showing an alternative arrangement of the windows on plots 1 and 2, that arrangement is not shown on the plans that are before me and were submitted with the application.
27. The positioning of the proposed dwellings relative to the neighbouring property would be sufficient to ensure that the outlook of the occupiers of the neighbouring

property would not be unduly restricted. However, the development would have an unacceptable effect on the living conditions of the occupiers of 14 Midhurst Road with particular regard to privacy. The proposal would, therefore, be contrary to Policy SD5 of The SDLP which requires that development avoids having a harmful impact upon surrounding uses. The proposal would also be contrary to The Framework which requires that development creates places with a high standard of amenity for existing users.

Biodiversity

28. The Framework requires that developments minimise impacts on and provides net gains for biodiversity. In this regard, whilst the appellant has identified that there are no ponds within the vicinity of the site, I do not find that this represents a compelling assessment of the potential biodiversity value of the site. Conversely, the Authority have identified that features at and within the vicinity of the site could lead to the site being used by protected species. Taking a precautionary stance, I find that there is a reasonable prospect that the site could host or be used by protected species and, given the absence of a robust assessment of the site and its biodiversity value, I cannot be certain that the proposal would not have a detrimental effect.
29. Whilst the appellant's submissions identify potential features that could be incorporated into the proposal, without a detailed assessment of the existing value of the site, I cannot be certain that these features would mitigate the effect of the development or achieve a net gain or that a condition could be imposed to address this matter that would meet the relevant tests.
30. For the reasons given above, the development would have an unacceptable effect on protected species. The proposal would, therefore, be contrary to Policies SD1 and SD9 of The SDLP which require that development conserves and enhances biodiversity and wildlife whilst also identifying and incorporating opportunities for net gains in biodiversity. The proposal would also be contrary to the abovementioned requirements of The Framework.

Highway Safety

31. The increase of the number of dwellings and residents at the appeal site would inevitably result in an increase of vehicle movements at the site, thereby causing the increased use of The Cylinders and its junction with Midhurst Road. The boundary treatments at the back edge of the footpath of Midhurst Road and the bend and topography of that road substantially restricts the visibility available to drivers entering Midhurst Road from The Cylinders, with views of vehicles heading towards the centre of Fernhurst being particularly restricted.
32. The Cylinders currently serves several properties and, as such, the uplift of vehicle movements relative to the use of the existing road would be limited. However, the evidence before me is not compelling in terms of demonstrating that the visibility at the junction is conducive to the safe movement of vehicles within the highway. Consequently, I am not persuaded that the additional use of the junction would not reduce highway safety for all users.
33. For the reasons given above, the development would have an unacceptable effect on highway safety. The proposal would, therefore, be contrary to Policies SD19 of The SDLP which require that development ensures the continued safe and efficient operation of the strategic and local road networks. The proposal would also be contrary to those parts of The Framework which require it to be ensured that safe and suitable access to the site can be achieved for all users.

Other Matters

34. The site is located within the settlement of Fernhurst and the proposal would represent an effective use of land at a site that is well located with respect to services, facilities and public transport connections. I see no reason to conclude that the appeal site is not an acceptable location for residential development and note that the main parties appear to agree that the principle of undertaking residential development is acceptable. Although minimal detail of other developments within the vicinity of the appeal site, including at Tulip Gardens, have been provided, they compound my findings in respect of the principle of undertaking development at this site. However, this does not alter my assessment in respect of the main issues set out above.
35. Furthermore, whilst the proposal would represent a boost to housing supply and I afford significant weight to that benefit of the proposal, this does not outweigh the harm that I have identified in the abovementioned respects. In this regard I have not been provided with evidence that demonstrates that the approach set out at paragraph 11d) of The Framework would be applicable but, even if it were, the harm caused to The SDNP would provide a clear reason to refuse planning permission.
36. The appellant has provided a plan that shows an alternative approach towards development at the appeal site in an attempt to address matters relating to the effect on the character and appearance of the development and the viability of providing affordable housing or a mix of housing that accords with The SDLP. I have no basis to conclude that this would be the only alternative way to bring forward development at the appeal site or that other approaches would not bring about the harm that has been identified above. Moreover, the submissions of the appellant are not compelling in terms of demonstrating that such a development, or any other development, would not be viable. As such, those submissions do not alter my assessment of the proposal.
37. I recognise that the appellant is dissatisfied with the actions of the Authority and the change of stance of the Highway Authority following their initial response. However, these matters do not alter my assessment of the planning merits of the proposal.

Conclusion

38. For the reasons given above, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR