



Appeal Decision

Site visit made on 18 January 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Appeal Ref: APP/C3810/W/20/3257996

Land Adjacent to Highfield House, Yapton Road, Barnham PO22 0AZ

- 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 B Aslam of Orchestra (Special Projects 1) Ltd & Glenavon Properties Ltd against the decision of Arun District Council.
 - The application Ref BN/128/19/OUT, dated 4 December 2019, was refused by notice dated 29 April 2020.
 - The development proposed is 70 bed Care Home and 14 Assisted Living Bungalows with associated car parking, landscaping and access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline, with details of access provided for consideration. All other matters are reserved for future approval.
3. The Council has advised that, in light of the further information submitted at appeal stage, it is no longer pursuing refusal reasons 2, 3 and 4 in respect of the loss of agricultural land, highway safety and tree protection. These matters can be addressed through planning conditions in the event of permission being granted. I have proceeded on that basis.
4. Reference is made within the evidence to an emerging Neighbourhood Plan for Barnham and Eastergate, and in particular the proposal for a Local Gap/Green Infrastructure Corridor. Policy ES3 is subject to an unresolved objection which will need to be considered as part of an independent examination into whether the draft plan meets the basic conditions. Given the uncertainty over the outcome of that process, I have attached the emerging plan negligible weight.

Main Issues

5. The main issues are:
 - a) the effect of the proposal on the character and appearance of the area;
 - b) whether the scheme should provide an element of affordable housing; and
 - c) whether there are material considerations which outweigh the conflict with the development plan arising from the site's location outside the Built-up Area Boundary and any further conflicts identified in respect of the above matters.

Reasons

Character and appearance

6. The appeal site is located on the north side of Yapton Road, outside of the Built-up Area Boundary defined for Barnham in the Arun Local Plan 2011-2031 (ALP). It comprises a rectangular shaped parcel of grazing/agricultural land covering approximately 1.18 ha. The frontage onto Yapton Road is hedged, but the northern and eastern boundaries are predominantly open, permitting unrestricted views from an adjacent public footpath¹, across the site and over fields, towards new housing and industrial scale glasshouses beyond a railway.
7. The surrounding area contains a number of uses including agricultural land, horticultural nurseries and residential development, notably a row of dwellings fronting the south side of Yapton Road. Windmill Shopping Village, named after Barnham Mill adjacent, lies behind the latter street frontage. There are various houses on the northern side of the road and a caravan storage use to the north-west of the site. The fields to the north have in the past been used for camping, although there is no evidence on the frequency or lawfulness of this use.
8. The appellant's view is that the appeal site is located in a very busy landscape, characterised by a mix of urban and rural uses. The site could reasonably be described as being just beyond the edge of the settlement. However, it is clearly distinct in character terms from the main built-up area which begins roughly 150 m to the west in the vicinity of Sunnyside Nursery. The site itself has a strong rural ambience and it forms an important physical and visual gap in the loose knit and sporadic ribbon of development stretching between Barnham and Yapton. These villages are separate, each with its own distinctive identity which is maintained through the retention of countryside in between. This countryside has intrinsic value, notwithstanding the lack of any formal landscape designation and the relative proximity to urban influences.
9. There has been recent housing development in the wider area, north of the railway line, east of Garden Crescent² and to the south of Yapton Road³. However, these schemes represent a natural continuation of the urban form of Barnham. By comparison, the appeal site is located some distance from the Built-up Area Boundary and its development would not read as an extension to the built-up area. This stretch of Yapton Road is subject to a 30 mph speed limit but despite this it does not convey a sense of being within a settlement.
10. The application is accompanied by plans which illustrate how the quantum of development could be accommodated on the site. The plans show a single large care home building, designed with four 2-storey wings around a central core. The assisted living units would be single-storey and concentrated on the eastern part of the site near the access onto Yapton Road. Clearly, the site could be developed differently; however, it is obvious that the site would need to be developed in-depth and that the care home building would need to be of some reasonable size. This form of development would bear no relation to the pattern or scale of buildings in the vicinity. The site's open and undeveloped character would be transformed into something altogether more urban.

¹ Barnham 325-1

² APP/C3810/A/12/2180855

³ Council Refs BN/32/15/OUT & BN/6/18/RES

11. The appellant has put forward a comprehensive landscaping scheme, which it is argued would offset any adverse visual impacts. The existing hedging and new boundary planting would provide some screening for the new buildings but it would not mitigate for the loss of the site's rural character and the open gap.
12. The Council is concerned that the development would block and disrupt established and long-distance views to the South Downs National Park (SDNP) beyond. There would be some loss of views of the South Downs on the far horizon. However, the quality of those views is already diminished by large horticultural buildings in the foreground. Thus, whilst there would be some adverse impact on views into the SDNP this factor does not weigh heavily against the scheme.
13. The appellant contends that any landscape impact is not significant in its context, but in my opinion the adverse landscape and visual impacts would be considerable. The development would be wholly at odds with the semi-rural surroundings, despite the amount of landscaping proposed. The proposal would have an unacceptable impact on the character and appearance of the area. It would therefore conflict with Policies D DM1, LAN DM1 and H DM2 of the ALP and Policies CLW1, ES4 and ES6 of the made Barnham and Eastergate Neighbourhood Plan 2014-29 (BENP). These policies are consistent with the National Planning Policy Framework (the Framework) insofar as they seek to ensure that new development recognises the intrinsic character and beauty of the countryside and is sympathetic to local character.

Affordable housing

14. For all developments of 11 residential units or more Policy AH SP2 of the ALP requires a minimum 30% of the total number of units proposed on site to be provided as affordable housing. The Council's position in the case of residential care homes is that they are classed as C2 use and therefore exempt from affordable housing contributions. The authority does not provide a view on the use class of the proposed development; its contention is simply that where, as in this instance, there are additional self-contained units, these should be subject to affordable housing requirements as there is no (or limited) care element and just being specified for a specific age group is insufficient to comply with paragraph 64 of the Framework⁴.
15. Determining the relevant use class is a matter of fact and degree to be established on the facts of each case. The appellant's view here is that the proposal can be categorised as a single institutional use. The contention is that the care home and assisted living units would operate as a single planning unit; a residential institution falling within Class C2 of the Use Classes Order. It is put to me that the assisted living units are effectively an intermediate product bridging the gap between open market housing and the care home, but very much part of the overall function of the site.
16. The assisted living units would be fully accessible and would provide an option for couples where only one partner requires significant levels of care. The primary occupiers of these units would be required to meet minimum age restrictions and pay a service charge, and they would have access to the

⁴ This element of national policy exempts purpose-built accommodation for the elderly from the requirement to make at least 10% of homes available for affordable home ownership.

communal grounds and shared facilities⁵ provided on the site. The service charge would cover the cost of those facilities, a full-time site manager and care packages which would be tailored to the individual. The additional cost would be off-putting to all but those older persons in genuine need of care.

17. Within its evidence, the Council raises concerns about the lack of a mechanism to tie the assisted living units to the care home. A signed unilateral undertaking (UU) has since been provided which covenants that the development shall be occupied and operated as a composite care facility within C2 of the Use Classes Order. The UU ensures that the assisted living units would not be severed from the operation of the wider development or occupied as independent dwellings within Use Class C3. It dictates that at least one resident of each unit must be in need of a minimum 2 hours of personal care a week, established by a health professional, and must also enter into a contract to purchase at a minimum the Basic Care Package – the Council being able to control the content of that package. I note that the UU contains a drafting error in relation to the age of occupier. The inclusion of a blue pencil clause at paragraph 5.3 means that this is not fatal to the deed as a whole and an age restriction could be imposed by means of a planning condition in the event of the appeal being allowed.
18. Overall, it is clear that the proposed assisted living units would be more than C3 dwelling houses. They would provide for independent living in much the same way, but this would be alongside a range of care and other elements which are specifically targeted at older persons. In some cases, occupiers of the assisted living units would progress to become residents of the care home as their individual requirements evolve.
19. To conclude, I am satisfied that the assisted living units could be tied to the use of the care home. The site would therefore operate as a single physical and functional planning unit within C2 of the Use Classes Order. That being the case and, having regard to the Council's stated position on C2 uses, an element of affordable housing is not required within the scheme. Consequently, I conclude that there is no conflict with ALP Policy AH SP2.

Other Matters

20. The appellant has referred to an appeal decision for a dementia care centre in Crookthorn Lane, Littlehampton. That site lies within a designated gap between Littlehampton and Middleton-on-Sea, but the Inspector concluded that the scheme would not conflict with development plan policy in regard to the gap, or with those policies relating to character and appearance. There were similarities in terms of the nature of the proposed development and its benefits, but the planning balance was different. Consequently, I am not compelled to reach the same decision and have determined the present appeal on its merits.
21. The submitted UU secures contributions towards library services and fire and rescue infrastructure. These are intended to mitigate the impact of the development on public services and as such are neutral in the planning balance.

Planning Balance and Conclusion

22. The proposal is contrary to ALP Policies SD SP2 and H DM2 by virtue of the site's location outside of the Built-up Area Boundary. The scheme does not fall

⁵ The appellant explains that the exact range of services has yet to be determined, but is likely to include social clubs, mobile hair dressing, communal dining etc.

- within any of the categories of development identified within ALP Policy C SP1 as being permissible in the countryside. However, the weight I can attach to these policy conflicts is limited by the Council's inability to demonstrate a 5 year supply of deliverable housing sites. The latest Annual Monitoring Report calculates the land supply position at 3.3 years, furthermore the Housing Delivery Test results indicate significant under-delivery.
23. Paragraph 11 of the Framework indicates that where the requisite housing land supply does not exist permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The site has no designations and contains no assets of particular importance; it is therefore the second limb of the policy which is applicable in this case.
24. The Council does not contest the findings of the submitted review which identified a lack of potential alternative sites. Moreover, it accepts that there is an acute need for care homes and assisted living accommodation in the District. The proposal would help to meet this demand through purpose-built accommodation which enables older people to stay in the area near friends and family. It would reduce hospital admissions and 'bed-blocking' and free up general needs housing, thereby assisting in remedying the housing shortfall. These are all planning benefits of considerable importance and weight.
25. The development would also provide employment during the construction phase and thereafter it would provide a range of jobs and stimulate the local economy through additional spending. Community Infrastructure Levy, Council Tax and Business Rates revenues would generate further monies for public bodies. I have attached these benefits a modest degree of weight.
26. The appellant has highlighted a number of other benefits, including the net gains for biodiversity and improved pedestrian facilities. These carry positive weight in the overall planning balance but I do not consider them to be significant factors. I have also taken account of the site's accessible location relative to public transport and the services and facilities available in Barnham.
27. Against the above benefits I must balance the harm to the character and appearance of the area. These adverse impacts would be significant and irreversible and they would bring the scheme into direct conflict with those policies of the ALP and BENP, and the Framework, which seek to ensure that new development respects its context. In my judgement, the adverse impacts are of sufficient magnitude and duration as to significantly and demonstrably outweigh the benefits. As such, the proposal does not benefit from the Framework's presumption in favour of sustainable development.
28. Accordingly, I conclude that the proposal conflicts with the development plan taken as a whole, and there are no material considerations to justify a decision otherwise than in accordance with the development plan. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR