



# Appeal Decision

Site visit made on 9 March 2021

**by Guy Davies BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 March 2021**

**Appeal Ref: APP/C3810/W/20/3262770**

**Poachers, Eastergate Lane, Eastergate, Chichester PO20 3SJ**

- 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 Tony Occleshaw against the decision of Arun District Council.
- The application BN/46/20/PL, dated 6 May 2020, was refused by notice dated 24 July 2020.
- The development proposed is the construction of a new 4 bedroom detached, multi-generational, highly energy efficient dwelling with detached carport.

## Decision

1. The appeal is allowed and planning permission is granted for the construction of a new 4 bedroom detached, multi-generational, highly energy efficient dwelling with detached car port at Poachers, Eastergate Lane, Eastergate, Chichester PO20 3SJ in accordance with the terms of the application BN/46/20/PL, dated 6 May 2020, and subject to the conditions set out in the attached schedule.

## Main Issues

2. The main issues are:
  - Whether the site is in a suitable location for a dwelling having regard to accessibility and local spatial policy
  - The effect on the character and appearance of the countryside.

## Reasons

### *Location and accessibility*

3. The site lies outside the built up area of any nearby settlement as defined on the Policies Maps of the Arun Local Plan 2011-2031 (July 2018). Policy SD SP2 of the Local Plan focuses development within the built up area boundaries, while policy C SP1 defines land outside built up area boundaries as countryside which will be recognised for its intrinsic character and beauty. The policy lists a variety of types of development that are permissible in the countryside, none of which are applicable to the appeal scheme.
4. Case law<sup>1</sup> has held that while built up area boundaries shown on local plan policies maps are a relevant consideration, they are not necessarily determinative for assessing whether a site is isolated in the sense that it lies within countryside or alternatively falls within a settlement. In this case the appeal site forms part of the scattered development along Eastergate Lane,

<sup>1</sup> Braintree DC v SSCLG, Greyread Ltd and Granville Developments [2018] EWCA Civ 610

which is separated from the defined settlements of Barnham/Westergate/Eastergate to the south and Fontwell to the north by open farmland and horticultural cultivation under glasshouses. It also falls outside those areas which are allocated for housing in the Local Plan or the Barnham & Eastergate Neighbourhood Development Plan 2014-29. The looser knit form of development and its countryside setting distinguishes it from the denser, more regular form of development that characterises the settlement areas. I therefore consider the site does lie in countryside outside any built up area.

5. In addition to protecting the countryside from encroachment, locating new development within built up areas helps to ensure that local services and facilities are more accessible to the occupants of the development and reduces the need to travel by motor car. In terms of accessibility, the appeal site is within walking or cycling distance of local services and facilities, which are available in the nearby settlements, and there is a pavement and a bus service running along the A29 Fontwell Avenue to the west of the site. However, Eastergate Lane which links the site to Fontwell Avenue does not have any pavements and is unlit. As such, the Council argues this would be likely to discourage walking and therefore leave the use of private motor vehicles as the more likely means of transport to and from the site.
6. The appellant questions the consistency of decision-making by the Council in relation to the accessibility of development and has drawn attention to recent developments permitted outside built up area boundaries in the vicinity of the appeal site, including at Swallowfield, Eastergate Lane<sup>2</sup> and on land west of the Fontwell Avenue<sup>3</sup>. Other developments, either granted by the Council<sup>4</sup> or allowed on appeal<sup>5</sup> have also been referred to by the appellant but as these are some distance from the site are less comparable in terms of accessibility and I give them limited weight.
7. I note that the dwelling at Swallowfield was permitted as a replacement for former buildings on the site, and the development at Fontwell Avenue is better served by means of transport other than the motor car, which the Council argues distinguishes these sites from the appeal site<sup>6</sup>. However, in both cases the Council raised no objection on the grounds of accessibility to local services and facilities, including Swallowfield, which is slightly further away from Fontwell Avenue than Poachers. Although the lack of pavements and lighting along Eastergate Lane is a material consideration, the section of the lane linking the site with Fontwell Avenue is short, reasonably straight with good visibility in both directions, and has grass verges on either side. Having regard to the Council's previous decisions I do not see it as an insurmountable reason for future occupants to access local facilities by means of transport other than the motor car.
8. Notwithstanding my assessment of accessibility, I conclude that the appeal site does lie in countryside outside the built up areas of any of the nearby settlements. The proposed development would therefore conflict with policies SD SP2 and C SP1 of the Arun Local Plan 2011-2031 (July 2018), and policy H4 of the Barnham & Eastergate Neighbourhood Development Plan 2014-29, which

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<sup>2</sup> BN/121/19/PL

<sup>3</sup> BN/50/20/PL

<sup>4</sup> AL/79/20OUT

<sup>5</sup> W/4001228

<sup>6</sup> Comments of Arun District Council on a late submission from the appellant

seek to direct new development to within built up areas other than where a countryside location is appropriate or necessary.

9. Policy H3 of the Neighbourhood Development Plan, referenced in the Council's first reason for refusal, is not relevant to this appeal as it relates to housing mix.

#### *Character and appearance*

10. The character of the area is one of scattered development set amongst open grazing land and horticultural glasshouses, which are a feature of the area. Where there is residential development, it is generally large, detached houses set in extensive grounds fronting the lane. Other uses include equine establishments, storage yards and small workshops. Notwithstanding these commercial operations, Eastergate Lane and the land around it retains a generally rural character and appearance.
11. Poachers is an example of one of the large detached houses that front Eastergate Lane. The appeal site forms land to the rear of the house and its ancillary outbuildings. It is referred to by the Council as a paddock although the appellant considers it to be domestic garden area and therefore previously developed land<sup>7</sup>. Based on the Ordnance Survey extract submitted with the appeal it appears to have been a separate parcel of land, although on my site visit I noted that it is no longer fenced off from the land around Poachers, and did not appear to be used for the grazing of animals. It is not the role of this appeal to determine the lawful use of the site as there are other planning procedures, for example through determination of an application for lawfulness under sections 191 and 192 of the Town and Country Planning Act 1990, that are available for resolving such matters. I have considered the site as it appears at present.
12. The site is partly screened by trees and hedging, including a bund planted with shrubs and small trees along part of its western and northern boundaries. It is flanked on its eastern side by the residential garden of a neighbouring property, and to the rear by a caravan park. These surrounding uses mean that there would only be limited views of the proposed development from outside the site, mainly from the west across open grazing land.
13. The grazing land has been identified as a possible housing allocation in the emerging Barnham & Eastergate Neighbourhood Development Plan 2 (land north of Spode Cottage, Eastergate Lane). If this grazing land were to be developed it would result in the appeal site being wholly surrounded by other forms of development. However, the emerging Neighbourhood Plan is at an early stage, a pre-submission draft of the Plan having only just completed a local consultation exercise in January 2021. As the Plan has not reached submission stage or been independently examined, it carries only very limited weight.
14. The appeal proposal would introduce new residential development into a rural location whose character remains largely one of open grazing land or horticulture. However, because of the surrounding uses and the degree of screening that is present, and which would be retained, the proposed dwelling

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<sup>7</sup> Dartford BC v SSCLG [2017] EWCA Civ 141

and carport would not be visually prominent and would have only a limited impact on the rural qualities of the area.

15. I conclude that the proposed development would have a harmful, albeit limited, impact on the character and appearance of the countryside, contrary to policies D SP1 and D DM1 of the Arun Local Plan 2011-2031 (July 2018) and policies ES5, ES6 and H4 of the Barnham & Eastergate Neighbourhood Development Plan 2014-29, which require good design that reflects the characteristics of the site and local area.

### **Other Considerations**

16. The appellant states that the Council is only able to demonstrate a housing land supply of between 2.9-3.7 years. This is significantly below the 5 year housing land supply that the Council is expected to deliver. The Council has not acknowledged the exact shortfall in housing land supply but does accept that it is less than 5 years. Consequently, the housing policies which are most important for determining the application must be considered out of date.
17. In such a situation, paragraph 11 of the National Planning Policy Framework advises that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusal, 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.
18. The site does not fall within any of the protected areas or affect assets of particular importance that are listed in footnote 6 of the Framework. My judgement therefore turns on whether the harm identified under the main issues significantly and demonstrably outweighs any benefits of the proposed development.
19. In this case the development would result in one additional dwelling. While this would make only a modest addition to the housing stock in the District, given the significant shortfall in housing land supply that carries materially beneficial weight and accords with paragraph 59 of the Framework, which acknowledges the Government's objective of significantly boosting the supply of homes. The building has also been designed to be highly energy efficient and carbon negative in its operation. This would exceed the current requirements of building regulations and would be of modest benefit.
20. Economic benefits arising during the construction of the development would be temporary and I give them little weight. The appellant intends to use the proposed dwelling for inter-generational living but as the building would remain long after the appellant's personal circumstances had changed, I also give little weight to this benefit.

### **Planning Balance**

21. Determination of the appeal should be made in accordance with the development plan unless material considerations indicate otherwise<sup>8</sup>. In this case the proposed development would not be in accordance with the development plan when taken as a whole because it would lie outside any built up area and would impact on the character and appearance of the countryside.

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<sup>8</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004.

However, in both cases the harm so caused would be limited. I do not consider that this limited harm would significantly and demonstrably outweigh the benefits to be gained from the proposal. Consequently, the development benefits from the presumption in favour of sustainable development as set out in paragraph 11 of the Framework.

22. I conclude that the presumption in favour of sustainable development is an important material consideration that in this case outweighs the limited conflict with the development plan. It follows that planning permission should be granted.

### **Conditions**

23. I have considered the conditions suggested by the Council and imposed them where I consider they meet the guidance in paragraph 55 of the Framework, subject to minor rewording in the interests of clarity and precision. That includes avoiding the use of pre-commencement conditions where not justified.
24. In addition to the standard time limit condition, a condition listing the approved plans is necessary in the interests of certainty. A condition requiring approval of external materials is necessary in the interests of the appearance of the buildings and the character of the wider area. Approval and implementation of a surface water drainage system is necessary to avoid flooding of the site or land outside it. Conditions requiring the provision of renewable energy generation on site and a charging facility for electric cars are necessary as environmental benefits of the scheme and in the wider interests of tackling climate change. Car and cycle storage are necessary on the site to avoid parking on the public highway and to encourage cycling. I have combined the two conditions suggested by the Council into one. A condition requiring the installation of a fire hydrant is necessary to address the needs of the fire service and ensure adequate water supply in the event of a fire. A condition requiring the recommendations in the ecological report to be implemented is necessary in the interests of protected species. A condition requiring fencing around retained trees is necessary to ensure their protection during building operations.
25. I have not imposed a condition relating to a construction management plan as the development is of modest size and well contained within its site. The only property likely to be disturbed by construction activity is Poachers, which is in the ownership of the appellant. I have also not imposed a condition restricting domestic permitted development rights for extension. Paragraph 53 of the Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. I see no clear justification in this case.

### **Conclusion**

26. I conclude that the appeal should be allowed.

*Guy Davies*

INSPECTOR

### **Schedule of conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20-038/LP1, 20-038/SP1A, 20-038/1, 20-038/2, 20-038G1.
- 3) No development above damp proof course level shall take place until a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings has been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved schedule.
- 4) No development above damp proof course shall take place until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. Once approved, the water drainage scheme shall be implemented prior to first occupation of the dwelling hereby approved.
- 5) The development hereby permitted shall not be occupied until a schedule of works for the generation of renewable energy on site with the capacity to achieve energy neutrality for the dwelling has been submitted to and approved in writing by the local planning authority. The works, once approved, shall be installed prior to first occupation of the dwelling.
- 6) The development hereby permitted shall not be occupied until a facility to enable the charging of electric vehicles to serve the dwelling hereby permitted has installed within the site.
- 7) The development hereby permitted shall not be occupied until the car parking and cycle storage has been constructed in accordance with the approved plans. The parking space and cycle storage shall be retained thereafter for its intended use.
- 8) The development hereby permitted shall not be occupied until details of a fire hydrant have been submitted to and approved in writing by the local planning authority. Once approved, the fire hydrant shall be installed prior to first occupation of the dwelling hereby approved.
- 9) The development shall be carried out in accordance with the preliminary ecological appraisal report CSA/5026/01, dated June 2020.
- 10) All the trees shown on drawing 20-038/SP1A as to be retained and/or any trees whose canopies overhang the site shall be protected by strong fencing. The fencing shall be erected before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

**\*\*\* End of conditions\*\*\***