

Appeal Decision

Site visit made on 9 March 2021

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 30th March 2021

Appeal Ref: APP/L3815/W/20/3263956

Marina Farm, Thorney Road, Emsworth PO10 8DB

- 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 J Sullivan against the decision of Chichester District Council.
 - The application Ref SB/20/02077/FUL, dated 18 August 2020, was refused by notice dated 3 November 2020.
 - The development proposed is Redevelopment of previously developed land. Removal of existing 5 no. buildings. Proposed 1 no. new dwelling.
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Decision

1. The appeal is dismissed.

Procedural matters

2. For consistency I have taken the description of the proposed development from the appeal form and the decision notice. I have determined the appeal on the plans submitted.
3. In addition to main issues below, the Council's reasons for refusal also referred to the impact of the proposed development on European designated sites. I have dealt with this below.

Main Issues

4. The main issues are;
 - The suitability of the location for the proposed development, with particular regard to the site's accessibility to necessary services.
 - The safety of future occupiers of the building, with regard to the level of flood risk.
 - The effect of the proposal on the character and appearance of the area, with particular regard to the Chichester Harbour Area of Outstanding Natural Beauty.
 - The effect of the proposed development on the living conditions of future occupants, with regard to odour.

Reasons

Suitability of proposed location

5. The appeal site sits to the south of the Hermitage and Southbourne, outside of the settlement boundary areas (SBA). Policy 2 of the Chichester Local Plan,

2014-2029, seeks to ensure development is directed at appropriate sites across the District and development outside of SBAs are limited to certain exceptions, including schemes requiring a countryside location, meet an essential need or support rural diversification.

6. The proposed development is not demonstrated to meet the exception criteria of Policy 2 and as such would not accord with the policy and I afford this considerable weight in my decision.
7. Given the rural location of the proposed development, it is inevitable there would be a reliance on private car use to access services such as larger supermarkets and hospitals. However, the associated transport impacts would be low given the proposal is for one dwelling. The proposed development is also within a short, level, walking and cycling distance to shops, a post office, pharmacy, doctors' surgery, in addition to primary and middle schools. There is also a regular bus service to larger towns within a short distance from the site.
8. A key facet of Policy 2, is the need for new development to be accessible to necessary services by sustainable means, whilst there are some limitations to the site's accessibility to sustainable transport solutions, this is set against the recognition of the National Planning Policy Framework, 2019 (the Framework) that opportunities to maximise use of such transport networks varies between urban and rural areas.
9. As the site sits outside of an SBA, the proposal would not accord with Policy 2 of the CLP which amongst other things seeks to manage new development in the countryside. However, any harm associated with the need for private car use to access necessary services would in my view be limited.
10. Notwithstanding the conflict with the CLP identified above, the proposed development would, in my view, broadly accord with the Framework's intentions of promoting sustainable development in rural areas.

Flood risk

11. The proposed development site is located in Flood Zones 2 and 3. The proposed development would be more vulnerable than the stabling and buildings that it would replace. It would not constitute minor development and therefore a Sequential Test (ST) is required and then an Exception Test (ET) is necessary. The purpose of the ST is to steer new development towards areas with the lowest risk of flooding. Reasonably available sites in Flood Zone 1 should be considered before Flood Zone 2 and only when there are no reasonably available in sites on Flood Zones 1 and 2 should development in Flood Zone 3 be considered.
12. The submitted ST appears to have discounted any opportunity to utilise identified sites for more than two dwellings, seeking to justify this because of the intended size and sustainable design of the proposal. However, I have little justification before me to support that such an intended design could not be suitably accommodated elsewhere, or that the specific location is necessary for the intended development. I also have little evidence to demonstrate that the proposal could not be located in an area of lower flood risk given the intended scheme is for only one dwelling. Likewise, the appellant relies heavily on a lack of a 5-year housing supply as justification that no other sites are available. However, flood risk should not be offset against housing need without very

careful assessment of the risks and benefits, especially in a district where much of the land appears to be at a lower risk of flooding.

13. The Framework itself sets out specific policies of restriction, flood risk being one. I acknowledge the appellant has sought to design a flood resilient dwelling. However, I cannot be satisfied on the basis of the evidence before me that the ST is passed. Flood risk at the site remains higher than land across the majority of the district. As such, I consider that the possibility of building out part of a larger site, or utilising sites for more than two dwellings should not have been discounted and this may include land that has not been identified through the Strategic Housing Land Availability Assessment or Housing and Economic Land Availability Assessment. Similarly, land that is allocated or has permission, but is not being brought forward could also have been considered as a sequentially preferable option.
14. I note the submission of an exception test and site-specific flood risk assessment. However, as I find that proposal fails the ST, the requirements of the Framework have not been met, and I do not need to consider the exception test or the flood risk mitigation measures proposed.
15. I acknowledge that the Environment Agency have not objected to the proposal. However, this does not overcome the fact that I cannot be certain from the evidence provided, that other more suitable alternative sites do not exist for such development, even with the absence of an adequate 5-year housing land supply.
16. On balance, while I accept that the Council are likely to need to seek additional land for housing, in light of my findings above there is insufficient evidence to show that all options to meet the development's needs have been fully assessed in the ST. Consequently, the proposal has not properly addressed the ST and so conflicts with Policy 42 of the CLP, which amongst other things seeks to ensure that development proposals are not located in areas at greatest risk of flooding so as to ensure the safety of future occupants.
17. Likewise, for the reasons above the proposal would not satisfy the objectives of the Framework with regard flood risk.

Character and appearance

18. The character and appearance of the area is positively defined by the largely undeveloped, flat and open panoramic rural landscape associated with the coastal plain. The current buildings of the appeal site comprise a mix of timber barns and stabling. Although appearing to require some repair the buildings in their current form do not detract from the character or appearance of the area but rather reflect equine usage, typical of a rural setting. Small, stilted residential accommodation units sit behind the site to the northwest forming part of the wider marina development. However, this is clearly distinct from the site by virtue of an apparent difference in level and established belt of trees and vegetation.
19. The development site is located within the Chichester Harbour AONB. Paragraph 172 of the Framework says that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection. A special feature of the AONB being the flat coastal plain which the site sits within, in an exposed and prominent location.

20. The proposal would introduce a substantial residential building and associated gardens to a location free from such development, albeit currently accommodating barns and stabling. Whilst not appearing to be excessively deep, the building would be spread over a wide footprint. Furthermore, in order to provide flood resilient living accommodation, it would be raised approximately 3 metres off the ground, higher than much of the current built arrangement at the site and around level at its highest point with the existing residential buildings which sit elevated above the site. The overall bulk and scale of the development would therefore appear harmfully incongruous in its setting, detracting from the special character and appearance of the area.
21. This harm would be exacerbated by the expansive glazing proposed to the southern elevation, departing from that which currently exists on the site. I also have no reason to consider this would not lead to harmful reflection making the development more conspicuous in its setting.
22. Notwithstanding existing vegetation forming part of the site's backdrop, and the landscaping proposed, the proposal as a whole, would be clearly seen from public view points including the main road to the east, in addition to the well-used public rights of way which run past the site, linking to the marina and coast.
23. I accept that the proposal would result in a reduced footprint of developed form at the site overall and less hardstanding. However, that which it would replace is of wholly different usage and appearance, as such this would not overcome the identified harm.
24. For the reasons above, in my view the proposal would not conserve or enhance the landscape or scenic beauty of the AONB, but rather be of significant to harm to it and the character and appearance of the area.
25. Therefore, the proposal would not accord with policies 2 and 33 of the CLP which amongst other things seek to ensure that development proposals are in keeping with the character of the area and landscape, enhancing the character of the surrounding area. Likewise, the proposal would not accord with policies 45, 47 and 48 of the CLP, which in addition to that referred to above, collectively seek to ensure development in the countryside respects local distinctiveness and its setting in natural landscapes by ensuring scale, siting, design and intended materials have minimal impact on its surroundings. Similarly, the proposal would not accord with Policy 43 of the CLP, which seeks to ensure development in the AONB conserves or enhances its special qualities.
26. The proposal would not accord with the Southbourne Parish Neighbourhood Plan, 2014-2029, 2014, which seeks to protect the scenic beauty of the AONB.
27. The proposal would also not accord with the Framework's objectives of creating well designed places and conservation of protected landscapes.

Living conditions

28. The site is located within very close proximity to a wastewater treatment works (WwTw) to the east of the site, beyond the main road. In the absence of detail to the contrary, I have insufficient evidence before me to consider that future occupiers' enjoyment of the proposed development would not be diminished by odour associated with the WwTw.

29. The appellant considers that this matter could be dealt with by the use of an appropriate condition requiring an odour assessment in future, to a specification to be agreed with Southern Water and that the objection is routine. However, as decision-maker I consider it necessary for me to be certain that there would be no adverse impact on future occupiers' living conditions in this regard. I also do not consider it appropriate to impose a condition without the detail of any proposed survey methodology before me as I need to ensure the condition would be accurately worded to meet its intended purpose and meet the 6 tests of the Framework.
30. In the absence of detail to the contrary I therefore conclude that the proposal would not accord with Framework's intentions of achieving well designed spaces which promote health and wellbeing, with a high standard of amenity for future users.

Other matters and planning balance

31. The proposal would be located within the 5.6km zone of influence for the Chichester and Langstone Harbours Special Protection Area. The appellant has paid the Council that which the Council considered necessary to ensure the proposal, in conjunction with other plans and projects, would not significantly impact the integrity of the SPA. The proposal is also located within an area that the Council consider would have an impact on the Solent Maritime Special Area of Conservation by virtue of increased wastewater discharge leading to increased nitrate levels. Although no associated planning obligation has been provided I understand the appellant has proposed to re-wild land within his ownership to offset the likely nitrate discharge. However, given my findings above I have not considered these matters further.
32. I have had regard to the letters of support received. In addition to the matters above comments were received regarding the personal integrity of the appellant and their approach to the management of the site. However, these are not planning matters.
33. That the Council has not objected on other grounds does not make the proposal acceptable.
34. The proposed biodiversity enhancement, incorporating amongst other measures re-wilding of land, provision of ponds and woodland planting would be a benefit in favour of the scheme. Likewise, albeit small, there would likely be local economic benefit associated with the proposal's construction. There would also be a minor benefit to the local housing supply further to the creation of an additional energy efficient dwelling. Some minor public benefit would also likely be generated through the improvement to the PROW.
35. Although the site is located outside of an identified SBA and as such is contrary to the Development Plan, it would appear to be located in an accessible location and any associated transport impacts would be low given the proposal is for one dwelling. However, the proposed development conflicts with the Development Plan and the Framework in relation to its effect on local character and appearance, it would not conserve or enhance the setting of the AONB but rather be of significant harm to it. Furthermore, the ST provided does not sufficiently demonstrate that the development is necessary to be in the intended location and I cannot be certain that the proposal would not adversely

affect the living conditions of future occupiers. Therefore, in my view the benefits of the proposal do not outweigh the identified harm.

36. The Council is currently unable to demonstrate a sufficient forward supply of housing land. The Framework is clear that in such instances the most important policies are considered to be out of date and permission should be granted unless part i) or part ii) of Paragraph 11d of the Framework apply. For the reasons above, in my view, given the likely significant harm to the AONB, the application of policies in the Framework that seek to protect AONBs provide a clear reason for refusing the development proposed. Likewise, the ST provided does not justify the need for the intended development being in the location at risk of flooding as described in the Framework.
37. As such the proposal does not benefit from the presumption in favour of development and the proposal does not represent sustainable development.

Conclusion

38. For the reasons above, having considered the Development Plan and Framework as a whole, the appeal is dismissed.

M Scriven

INSPECTOR