
Appeal Decision

Site visit made on 19 October 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/Y9507/W/21/3274563
Oakfield, Love Lane, Petersfield GU31 4BW

- 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 Wright of Exclusiv Developments Ltd against the decision of South Downs National Park Authority.
 - The application Ref SDNP/20/02590/OUT, dated 26 June 2020, was refused by notice dated 10 November 2020.
 - The development proposed is the demolition of existing dwelling and erection of 27no. flats (outline) with access and all other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is made in outline with access to be determined and the detailed matters of appearance, landscaping, layout and scale reserved for separate consideration. As such, the layout and elevation plans are submitted on an illustrative basis. Whilst I have taken into account that there may be alternative ways of developing the site, I have primarily considered the illustrative plans on the basis of what the likely impacts of the erection of the number of flats proposed would be.
3. The National Planning Policy Framework was revised in July 2021 (the Framework). Both parties were given the opportunity to refer to it as part of the appeal process.

Main Issues

4. The main issues are the effect of the appeal proposal on:
 - The character and appearance of the area including trees
 - The living conditions of existing residents to the west of the site having particular regard to privacy, outlook and noise
 - Highway safety with regard to the proposed access, parking and servicing arrangements
 - Ecology
 - Whether adequate provision is made for affordable housing, and
 - Drainage
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Reasons

Character and appearance

5. The section of Love Lane nearest the appeal site has a somewhat mixed character due to the nearby housing, schools and nurseries, community facilities and ambulance station. However, it retains many rural characteristics because of the plentiful tree cover, narrow nature of the lane, prevalence of hedgerows and openness of nearby playing fields. In this context, the mostly one or two storey built form has an inobtrusive presence relative to the prevailing verdant and spacious character and appearance of the surroundings.
6. The appeal site is broadly triangular and accommodates a two storey detached house set in generous grounds. The building has a restrained presence largely due to the mature trees and hedgerows along the boundaries of the site that shield it. Accordingly, views of the site from Love Lane and the adjacent playing field are mostly of these natural features. Therefore, the appeal site and particularly the protected established trees within the site make a positive contribution towards the leafy, spacious qualities of the area.
7. The proposal would demolish the existing dwelling and replace it with 27 flats. The size and triangular shape of the site, together with the position of the access onto Love Lane would limit the number of ways such a development might be realistically accommodated. Given the number of dwellings proposed it is highly likely that it would need to take the form of a large block of at least three storeys in height, and this is confirmed by the illustrative plans. As such, the development would represent a dramatic increase in the volume and massing of built form at the site and consequently, a reduction in spaciousness.
8. As illustrated in the proposed site plan and elevations provided, an elongated block of considerable height would be positioned on a north/south axis close to the boundary with the adjacent playing fields. The proximity to the boundary¹ would be likely to result in the removal or severe reduction of the established trees and hedgerow along the eastern boundary leaving only limited space for planting to provide screening. As a result, it would have a much more prominent presence from the adjacent playing fields.
9. In addition, there would be substantial changes to the secluded access and impression of the frontage of the site. This includes a reduction in tree cover and vegetation due to the widened access and visibility splay². Furthermore, the illustrative plans³ in Appendix B of the Appellants' appeal submission shows a refuse store building adjacent to the access fronting Love Lane. Combined with the likely increase in height and proximity of the block building to Love Lane, this would result in a much greater emphasis to the built form at the site. Whilst the retained trimmed frontage hedgerow may provide some limited shielding, the building would nevertheless be visible from Love Lane over the top of the hedgerow and via the access. Furthermore, there would be increased views of hardstanding and parked vehicles from the street.

¹ Proposed Site Plan, drawing no. 21221 PL02 Revision A

² Plan 7673/202, Appendix 1 of the Transport Statement prepared by Cole Easdon Consultants Ltd dated November 2020, Appendix A of Appellants' Statement of Case

³ Proposed Site Plan Drawing Number 21221 PL02 Revision C & Proposed Elevations 21221 PL05 Revision C, Appendix B of Appellants' Statement of Case

10. The likely scale of the proposal would appear harmfully disproportionate in this context and the combination of the resulting reduction in spaciousness and tree cover, together with the increased prominence of the built form would adversely dilute the positive characteristics of the surrounding area. Moreover, the prominence of these changes in the street scene would exacerbate the degree of harm.
11. A blanket tree protection order covers the site. The tree survey schedule⁴ submitted by the appellants confirms that in addition to the hedgerows there are 16 trees at the site of moderate or low quality. Nevertheless, for the reasons already outlined, cumulatively they make a valuable contribution to the character of the area.
12. The tree survey does not clearly specify which trees would be lost. However, given the scale of the development, the resultant degree of coverage and built form, associated hardstanding and proposed cellular storage tank⁵, some development would be in close proximity to the boundaries. It seems very likely that this would be incompatible with the retention of many of the protected trees. The remaining space within the site not otherwise taken up by built form or hardstanding would be limited, which in turn would have consequences for the degree of planting and screening that could be successfully accommodated to soften the appearance of the development or establish replacement trees of a similar size. As such, it is very doubtful that tree cover equivalent to that presently at the site could be attained.
13. Taking these factors together, relative to the surrounding context, the development would appear stark and cramped which would undermine the spacious verdant qualities of the area. On that basis, it would not be sympathetic to local character, including the surrounding built environment and landscape setting, so would markedly fail to accord with paragraph 130c) of the Framework. Furthermore, it would conflict with paragraph 131 which, amongst other things, stipulates that planning decisions should ensure that existing trees are retained wherever possible.
14. In support of the proposal the appellants state that there is a variety of design evident in the area and the trees are not of the highest quality. Be that as it may, this would not justify a harmful development. Paragraph 40 of the National Design Guide states that well-designed new development responds positively to the features of the site itself and the surrounding context beyond the site boundary. It enhances positive qualities and improves negative ones. For the reasons outlined, the built form of the proposal would dominate the street scene as well as diminish the positive characteristics of the site and therefore, would not integrate successfully with its context. The illustrative plans supplied reinforce my concerns and I am not persuaded that an alternative design would be able to surmount them.
15. Accordingly, I find that the proposal would be harmful to protected trees and the character and appearance of the area. As such, it would be contrary to policies SD4, SD5 and SD9 of the South Downs Local Plan, July 2019 (SDLP). In addition, it would conflict with objective BE01 as well as policies BEP1 and

⁴ Tree Survey Schedule prepared by David Archer Associates dated February 2021, Appendix D, Appellants' Statement of Case

⁵ Drawing No 7673/501, Appendix 1 of Drainage Strategy prepared by Cole Easdon Consultants Ltd, January 2021, Appendix C, Appellants' Statement of Case

NEP5 of the Petersfield Neighbourhood Plan 2013-2028, made September 2015 (NP). In combination, these policies amongst other things, seek to encourage a high standard of landscape led design that positively contributes to the local area and conserves and enhances positive natural features such as trees.

16. The Authority also refer to policy SD8 of the SDLP in refusal reason 3 of the decision notice. This policy seeks to protect dark night skies in the national park. Although the site has some rural qualities, it accommodates an existing dwelling within the established settlement of Petersfield. On that basis, it would be likely that a sensitive lighting scheme could be designed as part of a detailed design that would prevent unacceptable harm to the level of nocturnal lighting in this context. As such, I find no conflict with this policy.

Living conditions

17. Several dwellings lie to the west of the appeal site in Upper Heyshott. Of those, numbers 30, 32 and 44 have rear garden areas that adjoin the boundary within which the respective occupants may seek to sit out and/or enjoy a reasonable degree of privacy. At present the tree and hedgerow planting along the boundary of the site facilitates this.
18. The configuration of the site and number of flats proposed is likely to mean a lengthy elevation of at least 3 storeys would face westwards towards these garden areas. This is reinforced by the illustrative elevations provided which show many windows serving principal rooms facing towards these properties, some with Juliet balconies. Consequently, there would be a substantial increase in windows at a higher level which would significantly increase the degree of surveillance of the rear gardens of the dwellings in Upper Heyshott by allowing intrusive views from several households.
19. The appellant asserts that an existing sycamore and apple tree⁶ along the south western boundary would provide adequate screening. I have already set out above, that it is doubtful that the existing degree of tree cover would be retained or adequately replaced. In any event, the position of these trees would do little to prevent downward views from the development towards no.44. Hence, even if they were successfully retained, they would provide only partial screening to Nos 30 and 32.
20. Based on the information provided and my observations, whilst a separation distance could be provided to prevent an overbearing impact on the residents to the west, I am not convinced that an unreasonable level of overlooking, chiefly to the garden areas, would be avoided. Therefore, the proposal would significantly and unacceptably harm the privacy of the occupants of 30, 32 and 44 Upper Heyshott.
21. In addition, the development would lead to a notable increase in vehicle movements using the access as well as parked cars close to the western boundary. The transport statement suggests there would be an average of 5 trips per hour over the course of a 12 hour day⁷. The illustrative proposed site plan shows car parking directly adjacent to the adjoining boundaries of 40, 42, 44 and 46 Upper Heyshott. Due to the likely proximity and number of car

⁶ Tree nos 10 & 11, Tree Survey Schedule prepared by David Archer Associates dated February 2021, Appendix D, Appellants' Statement of Case

⁷ Paragraph 4.7, Transport Statement prepared by Cole Easdon Consultants Ltd dated November 2020, Appendix A, Appellants' Statement of Case

parking spaces, occupants of those properties, if seeking to use the adjacent external areas to sit out and relax, would be aware of the presence and movement of vehicles. They would be likely to be regularly disturbed by associated vehicle noise. Occupants of no. 44 already have a communal car parking area to the south of their outside space and so the proposal would cumulatively have a significant detrimental impact.

22. Hence, overall, the proposal would fail to achieve a high standard of amenity for existing users as referred to in paragraph 130 f) of the Framework. Accordingly, the proposal would have an unacceptably harmful impact on the living conditions of existing residents to the west of the site having regard to privacy and disturbance from vehicle movements. Consequently, it would conflict with the Framework and policy SD54 of the SDLP which, amongst other things, seeks to prevent significant negative effects from noise arising.

Highway safety

23. The Authority's concerns with respect to highway safety are twofold. Firstly, the adequacy of the proposed access and secondly, whether an appropriate level of on site parking and servicing would be provided.
24. Paragraph 110(b) of the Framework states that safe and suitable access to development sites should be ensured. It is proposed to widen the existing access onto Love Lane to serve the 27 flats proposed. There are several factors pertaining to Love Lane which are relevant to my consideration of highway safety. Firstly, given the number of schools, nurseries, community facilities and playing fields near to the site, Love Lane facilitates a notable amount of pedestrian and cycle traffic, many of which are children. Furthermore, to the east the lane becomes inaccessible to motor vehicles and provides a pedestrian and cycle way, thereby attracting and encouraging such traffic. The peak times for most school and community associated traffic movements are likely to differ from more conventional commuter traffic.
25. Additionally, the section of the lane near to the appeal site has a footway on only one side of the road. Although there are parking restrictions on some stretches, based on my observations, the comments of the Highway Authority and the considerable number of local representations made, the unrestricted sections of the lane often contain parked cars. This restricts the available width of the carriageway and inhibits the movement of two way traffic. Furthermore, an ambulance station close by is likely to contain emergency response vehicles that would normally need to use Love Lane to access the wider road network. These factors mean that pedestrians and cyclists using the section of road near to the site already must exercise a considerable degree of caution.
26. In this context, it is important that adequate visibility is provided at access points onto Love Lane to enable road users to see a potential hazard in time to slow down or stop comfortably before reaching it. The technical guidance⁸ produced by the Highway Authority in relation to visibility splays requires 2.4m x 43m where there is a 30mph speed limit in force. However, the sketch⁹ provided shows only 2.4m x 25m which is appropriate for a 20mph speed limit. The speed limit for Love Lane is 30mph. In the absence of speed survey

⁸ Technical Guidance Note, TG3 - Stopping Sight Distances and Visibility Splays, Hampshire County Council, Appendix B, Authority's Statement of Case

⁹ Drawing number 7673/202, Appendix 1, Transport Statement

information, it is not demonstrated that such a reduction in visibility would be justified.

27. Moreover, there should be no obstructions within the visibility splays over a height of 1m. Given the prevalence of on street parking either side of the access point, even if the frontage hedgerow were trimmed back, I am not assured that sufficient account has been given to the presence of parked cars within the 25m Y distances shown. I further note that one of the illustrative site plans¹⁰ provided also appears to show the presence of a refuse storage building within the visibility splay.
28. Relative to a single dwelling, the introduction of 27 flats at the site would inevitably lead to a significant increase in vehicles using the access. This is reinforced by the submitted transport statement which suggests that the number of trips would rise from about 5-6 two way movements to around 60 two way movements per day¹¹. On this basis, despite the widening of the access, there would be insufficient visibility to safely serve the material increase in vehicle movements. Given the highway conditions outlined, that would represent an unacceptable risk to highway safety.
29. Policy SD22 of the SDLP requires development to incorporate appropriate levels of parking in accordance with adopted standards. Since the Authority made its decision, it has adopted Guidance on Parking for Residential and Non-Residential Development Supplementary Planning Document, dated April 2021 (SPD). Hence, the SPD provides parking standards for policy SD22 of the SDLP. Paragraph 2.11 of the SPD states that whilst parking policies in neighbourhood plans will be taken into account, where there is conflict the more recent guidance takes precedence.
30. On that basis, the requirements of policy HP8 of the NP for 51 on-site parking spaces defers to the more recent car ownership parking demand tool in the SPD. When applied to the appeal proposal and using normal rounding conventions, this indicates that 17 on-site spaces should be provided¹². Although layout is a reserved matter, the appellants state that 14 on-site car parking spaces would be provided as part of the proposal¹³, and consistent with the illustrative plans shown, it would be difficult to fit a greater number onto the site. Therefore, it would not meet the predicted car ownership demand.
31. My attention is drawn to the accessibility of the site to local facilities and public transport. Whilst I accept that future residents would have a genuine choice as to the mode of transport for trips they undertake, it is not shown that as a result there would necessarily be significantly lower car ownership levels. Moreover, the tool is specific to the local ward of the appeal site and therefore, already takes some account of these factors.
32. The ownership calculation tool provided assumes the tenure of the proposal to be owner occupied whereas the appellant refers to the development as 100% affordable housing. However, in the absence of a mechanism to secure affordable housing, it cannot be guaranteed. In any event, and in the absence of any alternative predictive calculations using the SPD tool, there is nothing

¹⁰ Drawing number 21221 PL02 Rec C, Appendix B, Appellants' Statement of Case

¹¹ Paragraphs 4.2 & 4.7, Transport Statement prepared by Cole Easdon Consultants Ltd dated November 2020, Appendix A, Appellants' Statement of Case

¹² Appendix A, Authority's Statement of Case

¹³ Application form section 8 & paragraph 6.9 Statement of case

before me to demonstrate that affordable housing occupants would own fewer cars than the occupants of private market flats.

33. Therefore, the evidence indicates that it is likely there would be a shortfall in on-site parking provision. In turn, this would increase pressure and competition for on-street parking spaces, demand for which appears to be high in the vicinity of the appeal site. This could lead to increased congestion and incidents of anti-social parking, both of which would compromise the safety of other road users, particularly more vulnerable pedestrians and make the walking and cycling environment less pleasant for everyone.
34. The Authority also raise concerns regarding the practicalities of refuse collection, cycle parking and emergency vehicle access to the site. An illustrative proposed site plan¹⁴ has been provided to show a widened access, refuse storage and cycle parking facilities. This is sufficient to indicate that emergency vehicle access could be provided. Given that layout is a reserved matter, it is likely that adequate cycle parking and refuse storage could be provided as part of a more detailed scheme, without compromising highway safety. Nevertheless, taking account of the landscape led SPD advice and as already alluded to elsewhere in my decision, it is likely there would be harmful knock-on impacts for the character and appearance of the area.
35. Overall, I find that the proposal would fail to provide a safe and suitable access to the site and would be likely to generate overspill on street parking. In this case, these factors would have an unacceptable impact on highway safety contrary to paragraph 111 of the Framework. Moreover, I find the proposal would conflict with policies SD19 and SD22 of the SDLP, and policy HP8 of the NP. In combination and amongst other things, these policies seek to ensure the continued safe and efficient operation of the local road network and an appropriate level of off-street vehicle parking.

Ecology

36. The ecology survey¹⁵ that was submitted with the application concluded that the existing property had moderate potential for roosting bats and the site hedges and trees a moderate potential to support foraging bats. All species of bat in the UK are protected. On that basis, it recommended a minimum of two emergence/ingress surveys should be undertaken on the property. These surveys were not provided as part of the application or appeal.
37. The proposal would result in the demolition of the existing dwelling and therefore, there would be a reasonable likelihood of harm to a roost supporting a protected species. However, there is no specific evidence to confirm this, and the scale of the harm is not identified.
38. It further follows that there is no certainty as to whether appropriate safeguards are proposed, or are indeed possible, to adequately mitigate for the likely harm. As such, this would conflict with paragraph 179 of the Framework which generally seeks to protect and enhance biodiversity and expressly mentions priority species, which encompasses some bats.
39. This is not a matter that can be appropriately made the subject of a condition, nor left to the reserved matters stage, as in both instances the principle of the

¹⁴ Drawing number 21221 PL02 Rev C, Appendix B, Appellants' Statement of case

¹⁵ Hone Ecology Extended Phase 1 Ecological Habitat Survey Report, April 2020

development would have already been permitted. To do otherwise would conflict with advice in Circular 06/2005 Biodiversity and Geological Conservation whereby the presence of protected species and the extent that they may be affected should be established before any planning permission is granted.

40. I therefore conclude that it has not been demonstrated that the proposed development would have no materially harmful effects on a protected species. On that basis the proposal would be contrary to policies SD2 and SD9 of the SDLP and policy NEP7 of the NP which, amongst other matters, seek to promote biodiversity and preserve protected species and their habitats.

Affordable Housing

41. Policy SD28(a) of the SDLP requires a minimum of 50% of new homes created as part of the proposal to be provided as affordable homes, of which a minimum 75% should provide a rented affordable tenure. The supporting text to the policy at paragraph 7.75 indicates that affordable housing provision will be secured by a section 106 legal agreement.
42. The appellant states that 100% of the homes proposed would be affordable comprising a tenure split of 75% rent and 25% intermediate housing. On the face of it, this would exceed the policy requirements and represent a significant benefit. Nevertheless, although it is stated that a planning obligation to secure the affordable housing was under discussion with the Authority, a completed obligation under section 106 of the Town and Country Planning Act 1990 is not before me.
43. It follows that in the absence of a legal agreement, it is not shown that 100% affordable housing would be secured as a benefit of the proposal. Neither is it shown that the policy requirement of at least 50% affordable housing would be secured. Therefore, the proposal would fail to meet the requirements of policy SD28 of the SDLP. Neither would it accord with the target in policy HP6 of the NP to provide at least 40% of all net dwellings on schemes of 6 or more units as affordable homes in perpetuity to meet local needs.

Drainage

44. The Authority is concerned that inadequate information has been provided to show that the proposal would provide adequate surface and foul water drainage. However, the appellants have provided a drainage strategy¹⁶ as part of their appeal documents. This confirms that despite an increase in hardstanding and the underlying geology being unfavourable for infiltration, surface water runoff from the site would be limited to a greenfield rate by incorporating sustainable principles such as permeable paving and a cellular system. It is proposed to connect to public sewers for foul drainage.
45. Moreover, the site is within Flood Zone 1, the lowest category of flood risk and the proposal is made in outline. Therefore, layout is reserved for a later stage. The absence of a fixed layout limits the ability to provide a surface water management strategy, save in the most general terms.

¹⁶ Drainage Strategy prepared by Cole Easdon Consultants Ltd dated January 2021, Appendix C, Appellants' Statement of Case

46. The Authority state¹⁷ that the Lead Local Flood Authority have considered the drainage information but still maintain their objection. However, the LLFA comments provided¹⁸ do not refer at all to the submitted drainage strategy, rather they reiterate that the application did not include any detail on the management of surface water drainage and lacked assurance that the development would not result in increased flood risk. Furthermore, they refer to the layout being fixed, which is not the case. Consequently, neither the LLFA nor the Authority have provided technical evidence to undermine the findings of the drainage strategy proposed.
47. Furthermore, paragraph 55 of the Framework stipulates that local planning authorities should consider whether otherwise unacceptable development could be made acceptable using conditions. There is little before me to explain why a condition to require additional detail as part of any reserved matters application dealing with the layout should not be used in this case.
48. Therefore, I find that a proportionate level of information has been provided to show that the proposal could provide adequate drainage. It follows that there would be no conflict with policy SD17 of the SDLP which primarily seeks to protect the water environment. Furthermore, the information provided reasonably responds to the requirements of policy BEP7 of the NP whereby developments must demonstrate that they have a neutral or beneficial impact on surface water and that the additional run-off must be managed on site using appropriate Sustainable Drainage Systems.

Planning Balance and Conclusion

49. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise¹⁹. In this case, I conclude that the proposal would be contrary to the policies of the development plan that relate to the protection of the character and appearance of the area including trees, the living conditions of nearby residents, highway safety, ecology and the provision of affordable housing. The cumulative degree of harm and conflict with the development plan attracts significant weight.
50. The proposal would contribute a net gain of 26 dwellings towards the overall housing supply by making more efficient use of land in an accessible location and would bring some economic benefits due to the construction process as well as the future activity of occupants. These factors weigh in favour of the proposal but given the moderate scale of development, they would attract a commensurate degree of weight. Therefore, the benefits of the proposal would not outweigh the significant degree of harm and hence, the decision should be taken in accordance with the development plan policies.
51. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁷ Paragraph 4.17 Authority's Statement of Case

¹⁸ Dated 22 July 2021

¹⁹ Section 38 (6) of the Planning and Compulsory Purchase Act 2004 & s70(2) of the Town and Country Planning Act 1990