
Appeal Decision

Site visit made on 1 June 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2021

Appeal Ref: APP/L3815/W/20/3264305

111 Second Avenue, Almodington, Earnley PO20 7LF

- 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 Ms A Berry against the decision of Chichester District Council.
 - The application Ref E/20/01235/FUL, dated 19 May 2020, was refused by notice dated 14 July 2020.
 - The development proposed is erection of new dwelling – alternative design to planning permission E/18/02530/FUL.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the refusal of the planning application and the submission of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 20 July 2021. The main parties were given the opportunity to address this matter, and I have taken this into account where relevant to my decision.
3. The Council confirmed that, subject to amendments to the Unilateral Undertaking (UU) under Section 106 of the Act, which was submitted as part of the appellant's appeal documents, the second reason for refusal, relating to the impact of the proposal on the Pagham Harbour and Chichester and Langstone Harbours Special Protection Areas (the SPAs) arising from recreational disturbance impacts, would be satisfactorily addressed. The appellant has submitted a revised UU dated 23 July 2021 which includes the Council's suggested changes. This is a matter to which I later return.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the integrity of the SPAs.

Reasons

Character and appearance

5. The appeal site forms part of a former horticultural holding located on the corner of Batchmere Road and Second Avenue. It lies within open countryside

outside the designated settlement policy boundary. The area has a very rural, flat, open, spacious character. Second Avenue is a narrow, single width lane, edged by grass verges, and it is a Public Right of Way. It serves a number of Land Settlement Association (LSA) horticultural holdings, which originally typically comprised a modest dwelling, together with outbuildings, glasshouses and pasture land. Over time, many of these small enterprises have evolved to larger scale production, including arable farming and packing and distribution, or the horticultural land has been abandoned, leaving just the dwellings.

6. The appeal site land holding forms an integral part of the prevailing countryside character and layout of development. The holding dwelling, lies to the east of the appeal site, comprising a two-storey, detached, brick and tile construction property, together with a residential garden and detached car barn building. The appeal site is occupied by a single storey agricultural building, and the remainder of the holding is given over to livestock grazing land. As such, the site has a strong rural character, which is clearly evident in views towards the site from the public realm in Second Avenue, due to the open nature of a large part of the site frontage, which is defined by low post and rail fencing and intermittent trees.
7. Permission was granted under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended), for the change of use of the existing agricultural building to a single C3 dwelling¹. The evidence before me, is that this permission, which expired in March 2020, was afforded significant weight by the Council as a fallback position when granting permission² for a detached dwelling in roughly the same position as the dwelling now sought under the current appeal. The latter consent is still extant.
8. Having regard to the Court of Appeal judgement³ relating to fallback positions, I consider that the extant permission constitutes a fallback position which is an important material consideration that carries significant weight for the purpose of my decision. Whilst the extant scheme has not been implemented, I find that there is a real possibility of it being implemented in the event that this appeal fails. This is on the basis of the existence of an extant grant of planning permission for the development, and the appellant's stated intention to implement the scheme. I see no reason to take a different view.
9. The extant permission has established the principle of constructing a detached, 5-bedroomed dwelling outside the designated settlement policy boundary and in roughly the same position as the dwelling now proposed. As such, the effect of the conflict of the proposal with the development plan policies in respect of new housing in the countryside as set out in Policies 2 and 45 of the *Chichester Local Plan: Key Policies 2014 – 2029* (2015) (the CLP) would be similar to that which would arise from the implementation of the extant scheme.
10. The existing outbuilding is a modest single storey structure, comprising 3 sections with a mix of blockwork and timber framed construction under corrugated pitched roofs. The extant permission comprises a building of a similar scale, massing, footprint, single storey height, and shallow pitched roof form as that of the existing outbuilding. It also retains the long rectangular

¹ Ref 17/00271/PA3Q

² Ref E/18/02530/FUL

³ Michael Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

form of the existing building. As such, it would assume a traditional rural building form, and would have a low key, subservient appearance in comparison to that of the main dwelling, akin to that of the existing rural outbuilding, and reflective of the role of the existing building within the holding as whole.

11. The design of the appeal proposal would differ notably from that of the extant permission. The proposed building would be significantly less like the design of an agricultural building, and more suburban in character than that of the extant scheme. This is due to a combination of its two-storey building height and asymmetrical roof design, together with a large amount of fenestration of distinctly domestic design, size, proportions and positioning, including floor to ceiling glazing leading onto a balcony, which would not be typical of the style and amount of fenestration typically found on rural buildings. The overall building character would be that of a chalet-style house, typically found within an urban area.
12. Whilst the new building would be set back further into the site than the existing building it would replace, it would still be visible from Second Avenue, including from the site access, and when approaching the site from the west, having regard to its two storey height, and the removal of the existing building. The large amount of glazing in the west elevation would also serve to draw attention to the building when viewed from the road across the adjacent flat and open grazing land. When viewed in conjunction with the existing two storey dwelling and the detached pitched roof car barn building, there would be a distinctly more urban cluster of domestic buildings which would be out of keeping with the aforementioned established low key LSA form of rural development. The flat and largely open nature of the appeal site and the surrounding countryside would also contribute to the proposed building assuming a visually dominant presence.
13. As such, due to a combination of its size and design, and position close to the existing domestic buildings within the site, the appeal scheme would have an urbanising effect on the appeal site, to the detriment of its open rural character.
14. Having regard to the above, and the evidence before me, I am not persuaded by the appellant's view that the extant permission represents a poor-quality design, nor that the proposal represents a significantly improved design and appearance in comparison to it, having regard to the prevailing character of built development within the site vicinity. In coming to this view, I note that the extant approval is subject to conditions to ensure sustainable design and construction and appropriate materials and finishes.
15. The appellant has drawn my attention to a number of permissions for new build dwellings, including those following on from Class Q Prior Approval consent, which have resulted in an increase in ridge heights above that of the original building and/or new first floor accommodation. These principles are not determinative in my conclusions in respect of the first main issue. Also, having considered the details of these schemes on the basis of the information before me, I find that none of these are directly comparable with the appeal scheme in respect of their detailed design, site context in relation to neighbouring buildings, and relationship with the street scene. In any case, I must determine

this appeal on the basis of the particular circumstances of the appeal site and on the merits of the scheme before me.

16. For the above reasons, I find that the proposal would demonstrably harm the character and appearance of the area. As such, it would not accord with the aims of CLP Policies 33 and 48, which amongst other things, seek to ensure that development proposals meet the highest standards of design, respect, and where possible enhance, the character of the surrounding area and site, its setting in terms of its form, massing, siting, layout, size, scale, and detailed design, and do not undermine the integrity of predominantly open and undeveloped land between settlements.
17. For similar reasons, the proposal would also conflict with the objectives of Chapter 12 of the Framework, which seeks to achieve well-designed places.
18. Reference is also made to CLP Policies 1, 2, 45 and 47 in the Council's first reason for refusal. I have had regard to Policy 1, since it is a general sustainable development policy, and I have referred to Policies 2 and 45 above, as development strategy policies. However, these policies have not been determinative to my decision. Policy 47 relates to the historic environment. I have not been made aware of any heritage assets that have the potential to be affected by the proposal, and as such, I do not find this policy to be directly relevant to the determination of this appeal.

SPAs

19. The appeal scheme results in an additional dwelling within the 3.5 km and 5.6km 'Zones of Influence' of the Pagham Harbour and Chichester and Langstone Harbours SPAs. It has been identified that current levels of recreational activity are having a significant adverse effect on certain bird species for which the SPAs are designated. This net increase in residential development has a potential impact upon the SPAs arising from possible disturbance to the birds due to increased recreational activity, such as walking, dog walking, boating and other water sports, around the shorelines of the harbours.
20. As such, without mitigation, the appeal scheme presents a likely significant effect upon the integrity of the SPAs, particularly when the impacts are considered in combination with other residential developments located within the 3.5km and 5.6km Buffer Zones to the SPAs. Therefore, as the decision maker, it is necessary for me to undertake an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations 2017), in relation to the effect of the development on the integrity of the SPAs. I have undertaken this on a proportionate basis with regard to the evidence submitted by both main parties and the consultation responses from Natural England in respect to the planning application.
21. There is no dispute between the Council and the appellant that a financial contribution is required towards mitigation measures to reduce the impacts of recreational activity as a result of the proposal to increase the number of units on site, in accordance with CLP Policies 50 and 51.
22. This payment would contribute towards a package of wardening, education, green infrastructure improvements and monitoring measures as part of Strategic Access Management and Monitoring (SAMM) to off-set the effects of

increased population on the SPAs, as part of the Bird Aware Solent and Joint Pagham Scheme of Mitigation schemes.

23. As this payment would contribute to agreed projects that would address the effects of the proposed development on the SPAs in terms of recreational pressure, and is in accordance with a strategic solution that is supported by Natural England, I am satisfied that the submitted S106 planning obligation would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposed development and would be pursuant to the Council's adopted strategy. Therefore, subject to the proposed mitigation, the proposal would not result in a significant harmful effect on the integrity of the SPAs, having regard to recreational impacts. Accordingly, I find no conflict with CLP Policies 50 and 51 in this respect.

Planning balance

24. The Council has confirmed that it cannot demonstrate a five-year supply of deliverable housing sites as required by the Framework. As such, there is an undisputed undersupply of deliverable housing sites within the District. The extent of the shortfall has not been confirmed, but there is no cogent evidence before me that the five-year supply shortfall is acute.
25. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five-year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, 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 the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
26. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development. Given the lack of a five-year housing land supply, paragraph 11 d) of the Framework is engaged.
27. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. One additional dwelling would make a very modest contribution towards addressing the housing supply deficit, and could be built-out relatively quickly, having regard to paragraph 69 of the Framework. There would also be some economic benefits as a result of the construction and occupation of the new dwelling. By providing a self-build unit, the proposal would also contribute to the Framework objective of creating mixed and balanced communities.
28. The appellant has confirmed the intention to incorporate high levels of energy efficiency into the building design. As the appeal scheme is only for one dwelling, these benefits would be modest.
29. However, a high standard of design is also a key aspect of sustainable development. The harm I have identified to the character and appearance of the area would be significant. As a result, the social objective of sustainable

development of fostering well-designed and beautiful places, would not be achieved.

30. Having given careful consideration to the balance of factors, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework. Therefore, the presumption in favour of sustainable development in paragraph 11(d)(ii) does not apply in these circumstances.

Other Matters

31. Whilst the Framework encourages the effective use of land in meeting the need for homes and requires the Council to approach decisions in a positive and creative way, these matters are not unqualified and would not address or outweigh the aforementioned harm that I have identified to the character and appearance of the area.
32. Whilst I have given careful consideration to the appellant's reasons for seeking the proposed dwelling, having regard to family accommodation requirements, I am mindful of the advice contained in Planning Practice Guidance⁴ that, in general, planning is concerned with land use in the public interest. It is also probable that the proposed development would remain long after the current personal circumstances cease to be material. For these reasons, I therefore find that this factor is not sufficient to outweigh the harm that would be caused contrary to the Local Plan and the Framework.

Conclusion

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

S Leonard

INSPECTOR

⁴ Paragraph 008 Reference ID 21b-008-20140306 – 'What is a material planning consideration?'