

Appeal Decision

Hearing Held on 2 November 2021

Site visit made on 2 November 2021

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2021

Appeal Ref: APP/D3830/W/20/3264213

Thyme Cottage, Sandhill Lane, Crawley Down, RH10 4LD

- 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 T A Homes (Land) Ltd against the decision of Mid Sussex District Council.
 - The application Ref DM/19/4609, dated 4 November 2019, was refused by notice dated 10 February 2020.
 - The development proposed is the erection of 2 dwellings, access, landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. After the appeal was submitted, the Council and the appellant entered into a S106 Agreement to address the matters included within the Council's reason for refusal No 4, namely the effects on the Ashdown Forest Special Protection Area. As this matter has now been satisfactorily addressed, I shall not consider it any further.

Main Issues

3. The main issues in this appeal are;
 - The effects of the proposal on the character and appearance of the area
 - The suitability of the location of the appeal site
 - The effects of the proposal on the nearby listed building
 - Whether the Council can demonstrate a suitable supply of housing land.

Reasons

Character and Appearance

4. The appeal site is outside the defined built-up area boundary of Crawley Down, as defined in the Mid Sussex District Plan 2018 (DP) and so is within the countryside. The site is close to the edge of the built-up boundary and forms land used as part of the large garden of Thyme Cottage (which is also outside

the boundary). The built-up area boundary, at its closest, includes land on the opposite side of Burleigh Lane, set to the west and so not directly opposite the appeal site. Land to the south, east and north is open and also outside the boundary.

5. Policy DP12 of the DP seeks to protect and enhance the countryside. It states that development will be permitted in the countryside, provided that it maintains or enhances the quality of the rural and landscape character, and i) is necessary for the purposes of agriculture, or ii) is supported by a specific policy reference elsewhere in the DP or Neighbourhood Plan.
6. The character of Burleigh Lane from its junction with Sandhill Lane, travelling east, is distinctly rural in character and appearance. There are no pavements, the verges to the lane accommodate large numbers of mature trees and a dense under-storey of vegetation and views of any buildings are generally in the distance. I consider that this character differs greatly from the area containing houses on Sandhill Lane where, despite the attractive character, it is a residential area dominated by houses, albeit mostly set within mature and large grounds. Some views into the appeal site are possible, although much of it is well-screened from the lane. Even so, its open and undeveloped nature contributes positively to the character and appearance of the countryside here.
7. The proposal would result in a pair of similar detached houses and garages being constructed side-by-side, with a shared access from Burleigh Lane. The houses would be of a substantial size and would be provided with a large hard-surfaced drive. The proposed access would necessitate the removal of the dense vegetation, including a tall Beech tree, from this section of the site frontage. I consider that the presence of the proposed development would be obvious and immediate, when viewed from Burleigh Lane. The shared drive and hard-surfacing would represent a harsh feature and would dominate views into the site, harming the existing rural character. The proposed houses and garages would span some considerable width of the site and, notwithstanding the intention to retain much of the planting on the site frontage, would be clear and obvious when passing the site. I consider that this change would harm the character and appearance of the countryside and would fail to preserve or enhance it and thus conflict with Policy DP12 as well as Policies CDNP05 and CDNP09 of the Crawley Down Neighbourhood Plan (NP) 2016. I acknowledge that there are houses nearby with large drives, some within the countryside but the particular character and appearance of this part of Burleigh Lane is distinctly rural in nature and differs from the area to the west.

Suitability of the Location

8. Reference is made within Policy DP12 to some development being permitted (which must maintain or enhance the quality of the rural and landscape character, as considered above), which is supported by other policies within the DP. In addition, Policy DP15 relating to new homes in the countryside refers across to Policy DP6 of the DP.
9. Policy DP6 relates to the settlement hierarchy. It states that development will be permitted within towns and villages with defined built-up area boundaries and that any infilling and redevelopment will be required to be of an appropriate nature and scale and not cause harm to the character or function of the settlement. It further states that, outside defined built-up area boundaries, the expansion of settlements will be supported where: 1) the site

is allocated in the DP, neighbourhood or other DPD or where it is for fewer than 10 dwellings; and 2) the site is contiguous with an existing built up area of the settlement; and 3) the site is demonstrated to be sustainable. A main point of disagreement between the Council and the appellant is that fact that the policy states that, "*outside defined built-up area boundaries, the expansion of settlements will be supported where...*" (my underline) and then in criterion 2) it states, "*the site is contiguous with an existing built up area of the settlement*" not including the word 'boundary'. Thus, the appellant argues that a property and site can be within (or contiguous to) an existing built up area of the settlement and outside the actual defined boundary of the built up area of the settlement.

10. The Council states that the reference in criterion 2) can only sensibly be read as meaning the built up area boundary as that is what is set out in the preceding sentence. The appellant considers that, although Thyme Cottage is outside the defined built-up area boundary, the property is part of the built up area of the settlement and so the appeal site is contiguous with the built up area of the settlement. In addition, due to the proximity of the actual boundary, the appellant states that the site is contiguous with the boundary (although maintaining that this is not a criterion of the policy).
11. The appellant submits references to judgements which they suggest support their view. In relation to *Braintree District Council v Secretary of State for Communities and Local Government & Ors [2018] EWCA Civ 610*, the comments relating to a site being within a settlement or not relate primarily to the consideration of whether it is "isolated" or not, with particular regard to (what is now paragraph 80 of) the NPPF. This is not the case here and although some statements are made in relation to the relationship of properties to settlements, it is in that context and was not examining a case such as that now submitted under this appeal. Therefore, I find little assistance from this case in determining the appeal before me.
12. The appellants also submit other appeal decisions in support of their case, relating to Policy DP6. The case at Hurst Wickham Barn (APP/D3830/W/17/3191742 and 3294173). I am directed to paragraphs 15 and 16 of that decision. The Inspector notes that the site is on the edge of Hurstpierpoint but outside the defined boundaries, noting that the boundary includes a neighbouring house. Within paragraph he then states that the site is contiguous with the built up area of the settlement. Although I note the wording used, it is not possible to say that he meant to make any distinction between the built up area boundary and the built up area, as is implied by the appellant. In my reading of the decision and the fact that the Inspector states that a neighbouring house was inside the boundary, it is likely that he was indicating that the appeal site was contiguous with the boundary.
13. In relation to APP/D3830/V/17/3166992, I am directed by the appellant to paragraph 24 of the Inspector's letter. I see this as a very generalised reference to the contents of the (then emerging) policy and was not made with the intention of examining the specific points put forward in the appeal now before me. Further, in relation to APP/D3830/W/18/3218035 for the same site, the reference made in paragraphs 8 and 9 are not designed to address such a specific point as the ones being put forward in the current appeal. Furthermore, from the submitted information, it is not possible to conclude absolutely that the site is not contiguous with the built up area boundary. Just

because the Inspector states that the development would be “on the edge of and contiguous with the existing settlement” does not mean that he was not referring to the boundary.

14. In my consideration, I do not accept that the appeal site is contiguous with the built up area boundary. The boundary includes Burleigh Cottage which is on the opposite side of Burleigh Lane and set to the west. They are close, but not contiguous, in my view.
15. In relation to the different interpretations of Policy DP6, I have taken note of the cases referred to by the appellant and have undertaken a fair reading of the policy and not sought to ‘forensically’ examine it. I am also aware of the need to take the policy at face value and not to seek to interpret it in a way that is not intended. It would seem entirely consistent with the earlier words set out in DP6 that when referring to the “existing built up area” in criterion 2) that this means the built up areas as defined by the boundaries, rather than introducing some other form of built up area and using a term so similar to it. I do not accept the appellant’s arguments that it refers to some wider area of the settlement which is also built up but is beyond the defined boundaries. I also accept the point made by the Council that, if one were to accept the appellants’ point, then each open site that was outside the defined boundary but next to another dwelling (and so contiguous with the built up area, as suggested by the appellant) could be developed, and could lead to a succession of developments ‘creeping’ into the surrounding countryside. I feel sure that this is not the intention of the policy.
16. Therefore, to conclude on this issue, I consider that the appeal site is not contiguous with the existing built up area and is not otherwise acceptable under Policy DP6. In relation to this matter I note that the parties agree that the proposal would not be contrary to Policy CDNP08 of the NP.

Listed Building

17. The appeal site sits on the south side of the road close to the junction of Sandhill Lane and Burleigh Lane. On the north side of Burleigh Lane and set to the west is the grade II listed Burleigh Cottage. Burleigh Cottage is said to have its origins in the 17th Century and was previously the farmhouse for Sandhillgate Farm. The Council considers that the open areas around the listed building, particularly to the east and the south, including the appeal site, contribute to the significance of the building by providing an open and semi-rural setting, along with the rural character of the road here.
18. The appeal scheme would see the appeal site developed to provide 2 detached houses and an access from Burleigh Lane. From the proposed entrance to the appeal site, it was not possible to see the building at Burleigh Cottage. It was screened from view by the dense frontage vegetation on the north side of the road, which would be unaffected by the proposal. Furthermore, when inside the appeal site, it was not possible to see the house at Burleigh Cottage. Whilst I have concluded that the proposal would have an unacceptable effect on the character and appearance of the area generally, I consider that these effects would not impose within the setting of the listed building due to the distance between them and the retention of the vegetation on the lane close to the listed building.

Housing Land Supply

19. Both the appellant and the Council agree that the housing land supply position is not critical to the outcome of the appeal. However, both disagree whether the Council can demonstrate a suitable supply of housing land. The Council's submitted evidence indicates that they can demonstrate a supply of 5.59 years or 5.34 years with a buffer of 5% or 10% respectively. The appellant considers this should be reduced to 4.67 years and 4.46 years respectively.
20. The submitted Statement of Common Ground for this issue indicates that the main areas of disagreement relate to 3 sites in particular and also to the inclusion of 525 dwellings which would arise from the Council's Sites Allocations DPD (SADPD) which has gone through the examination Hearings and the final outcome of which is due very shortly.
21. In relation to the specific sites, the appellant seeks to exclude 80 dwellings from the Council's calculations for the Clayton Mills site. This is on the basis that the reserved matters application remains undetermined and that the delivery of the projected 260 within the 5 year period from April 2021 is unlikely. The Council indicates that they expect the matter to be reported to the relevant Committee in December 2021. They also point out that they have agreed a statement of common ground with the developer which includes for the first completions in 2022/23 and accelerated delivery with 2 outlets from year 3. In my judgement, the Council's projections seem realistic and I see no reason to question them on the basis of the submitted evidence.
22. The Northern Arc development displays unrealistically high delivery rates, according to the appellant, and even accepting higher than normal delivery, the appellant seeks to remove 73 dwellings for the year 2024/25 and 135 from 2025/26. The Council has agreed a statement of common ground with Homes England which includes mechanisms for accelerated delivery including reduced lead in times, contractual arrangements, building methods and the use of multiple outlets. A Planning Performance Agreement has also been entered into. With these measures in place, I see no reason why the Council's figures should not be relied upon, simply because they are higher than one may historically have expected. In addition the Council refers to the first phase of affordable homes at Northern Arc (of 138 dwellings) are due for first completions in early 2022 (within the year 2021/22).
23. In relation to the land at Freeks Lane, the appellant has deducted 125 dwellings from the Council's figures. The site has planning permission for 460 dwellings and construction works have started. The Council has included 56 completions in 2021/22 and 138 in 2022/23. The appellant seeks to reduce the figure due to information received from a sales consultant in relation to 'access difficulties' who suggests that a delay of a year may transpire. The Council presents correspondence from the Senior Development Manager at the developing company, which confirms that there is a delay of a few months and that delivery will be recovered in 2022/23. The Council also points out that delivery in the final parts of the 5 years is currently projected to be lower, representing the end of the development but, if there were to be any delay initially, this could be made up within the later years within the 5 year period. In my judgement, I place more credibility in the statements made by the Senior Development Manager than those of the sales consultant. Furthermore,

the identified 'headroom' at the end of the 5 year period gives me confidence that any slippage could be made up for.

24. The appellant has also deducted 525 dwellings from the Council's calculations due to sites being within the Site Allocations DPD, which is not yet adopted and so its final content and form is not known. Whilst the outcome of the examination is not yet known, the Council places confidence in the deliverability of the sites and the 525 homes due to a number of factors: the DPD is at an advanced stage; post-hearings calculations have been submitted by the Council; all promoters of the DPD sites were at the examination process, indicating a willingness to deliver; the 525 dwellings are all projected completions in years 4 and 5 providing sufficient lead-in time for relevant permissions and commencement and those sites with longer lead-in times are not included in the 5 year calculations; planning performance agreements are intended for the 2 largest sites and a planning application has been submitted for site SA29. In my consideration of this matter, I acknowledge that the DPD has yet to be adopted and its final contents are not certain. However, it is at an advanced stage towards adoption and the factors set out by the Council indicates that, if those sites are included, then delivery may reasonably be expected within the time-frames suggested. In relation to the final outcome of the examination process, whilst it may be possible that some relevant sites are removed or altered, it seems highly unlikely that all of those would be removed or altered such that the full 525 would be removed from the 5 year calculation and not enough would be removed in my view to reduce the Council's figures significantly.
25. As a result of my consideration of these factors, I find that, on the basis of the evidence before me, the Council has satisfactorily demonstrated a supply of housing sites in excess of 5 years.

Conclusions

26. For the reasons set out above, I consider that the proposal would give rise to harm to the character and appearance of the area, contrary to those stated policies. The harm that I have identified would not be outweighed by any of the stated benefits, including the provision of new homes and any economic benefits arising from their construction. Therefore, the appeal is dismissed.

T Wood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Best, Planning Consultant
L Richards, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

S Nelson
C Grist
E Wade
A Henstock