



Appeal Decision

Site visit made on 17 January 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2022

Appeal Ref: APP/P1425/W/21/3273883

Land at Coldharbour Lane, North Chailey, Lewes BN8 4HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Pierfront Developments against Lewes District Council.
 - The application Ref LW/20/0642, is dated 16 September 2020.
 - The development proposed is described as '*construction of 18 entry level affordable dwellings (as defined by paragraph 71 of the NPPF) together with new access and parking and landscaping of the site (Outline planning application to establish access and layout only)*'.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The application is made in outline for the principle of development of the site for 18 entry-level affordable dwellings, with details of access¹ and layout² to be considered now. Details of appearance, landscaping and scale are reserved for future approval and insofar as some of these details have been referred to, they show how the site might be developed so I have treated as indicative.
3. The application site red line shown in the location plan and block plan is materially smaller than in the site plan. Notwithstanding this inconsistency, the site plan shows the access and layout for 18 dwellings and I have considered the appeal on this basis.
4. The Council did not determine the application within the statutory time limit. It did not submit an appeal statement and has not provided an officer report. By email and letter³ it referred to consultee and interested party comments, already provided as part of its appeal questionnaire, and set out six bullet point objections which would have been its grounds for refusal. It also commented on the appellant's draft unilateral undertaking and included copies of relevant development plan policies.
5. The appellant was given the opportunity to comment on the Council's email and letter. I have had regard to the comments received, which I note did not make any substantive response to the matters referred to by the Council. I further note that, aside from drainage, the appellant's final comments did not make any substantive response to the Council's appeal questionnaire. The

¹ Plan number 5461/001 Rev A

² Plan number 9312/100 Rev E

³ Dated 10 January 2022

appellant considered *'it does not raise any new issues nor does it introduce any new material'* and *'no material points have been raised that are of such weight that would warrant the refusal of the application'*.

6. I consider that the Council's email and letter refer to matters that were already evident from the Council's appeal questionnaire or before me in the appellant's appeal case. Nonetheless, and to that extent, they assist me and I have, therefore, had regard to both as part of my consideration of the appeal. I am also satisfied that the appellant has had sufficient opportunity to respond to these matters and has not, therefore, been prejudiced.
7. The main parties were given an opportunity to comment on the revised National Planning Policy Framework (the 'Framework'), which came into force on 20 July 2021. No comments were received.

Main Issues

8. The main issues are:
 - whether the site would be suitable for residential use, having regard to ground conditions;
 - whether the site would be an appropriate location for entry-level affordable housing, having regard to local and national policy for housing, and would deliver this type of housing;
 - the effect of the development on the character and appearance of the area, with reference to access, layout and its location in relation to North Chailey and Newick;
 - whether the development would be acceptable in highways terms, having regard to access and layout; and
 - whether it would make satisfactory provision for surface water drainage, with respect to layout.

Reasons

Ground conditions

9. The appeal site is a narrow grass field, originally part of a disused railway line and cutting which has been subject to historic landfill. While the nature of the infill material is, at this time, conjecture, there is at least sufficient reason to suspect that the site may be hazardous or contaminated.
10. The Framework requires planning decisions to ensure that the site is suitable for this proposed, more vulnerable, residential use taking account of ground conditions including land instability, contamination and former activity. The site is also near existing dwellings. Assessment should be informed by adequate site investigation prepared by a competent person. It can be proportionate to a decision at outline stage, but sufficient to give confidence that permission in full can be granted at a later stage. However, there is no report on a desk study and site walk-over and no site investigation or risk assessment. I cannot, therefore, be certain that the site is not hazardous or contaminated or that any necessary remediation or mitigation would be possible or suitable.
11. As a result, I find that the appellant has not demonstrated that the site would be suitable for residential use, having regard to ground conditions. It would not

comply with Policy DM21 of the Lewes District Local Plan Part 2, February 2020 (the 'LPP2'). This policy requires adequate investigation of potential contamination and, if necessary, effective measures for mitigation.

Entry-level affordable housing

12. The Council accepts that the need for homes suitable for first time buyers (or those looking to rent their first homes) is not being met in the district, which has one of the highest house price to income ratios in the country. This tallies with the appellant's assessment of an under-delivery of affordable housing in the district, including on rural exception sites. I have no reason to disagree.

Location

13. LPP2 Policy DM1 permits development on sites outside a 'planning boundary' (defined settlement boundary) if it needs to be in the countryside. The Council accepts that its development plan is silent on proposals for entry-level affordable housing. Framework paragraph 72 b) anticipates entry-level exception sites adjacent to existing settlements. There is no dispute that the site meets these criteria. However, I have found in the main issues above and below that the proposal would not be acceptable in design. It thus fails to comply with paragraph 72 b) overall.
14. Furthermore, the development plan and the Framework must be read as a whole. A purpose of the Council's planning boundaries is to focus growth on sustainable settlements and reduce the need to travel. North Chailey is a 'local village', with very few facilities and services, and Newick is a 'rural service centre' with a number of key facilities and services. Collectively, they meet many day-to-day living needs, including a primary school, though there is no evidence of any significant local employment or weekly shopping facilities in, or near, either settlement.
15. I acknowledge that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. However, even though it would be a small or medium size windfall site, the Framework states that the planning system should actively manage patterns of growth in support of sustainable transport objectives.
16. While the site is connected to both settlements by footways these are narrow, unlit and in places are close to the busy, fast A272 roadside which must also be crossed to walk to Newick. There are no nearby crossing points or cycle lanes. This would reduce the attractiveness of walking (especially for children, parents with pushchairs and the disabled or visually impaired) and cycling. Both settlements are connected to larger settlements (and rail services) by at least an hourly bus service, though none in the evenings or Sundays. There are convenient stops near the site, with a shelter and bench in one direction, though no raised kerbs to facilitate easy bus entry/egress. This would reduce the attractiveness of using the bus for the above users.
17. The site is not in, next to or even visually or physically well-related to the planning boundary of North Chailey or Newick and is outlying from their centres, facilities and services. A significant number of dwellings is proposed and would consolidate a more sporadic, dispersed pattern of residential development. This would not result in housing focussed in, or at, a sustainable location and be at odds with these aims of the Council's spatial strategy and

settlement hierarchy. Moreover, even though the increased population would likely support some local services, the proposal would not limit the need to travel, particularly by the private car.

18. I have been referred to an appeal decision⁴. I acknowledge that there is no separate sustainability requirement in, what is now, Framework paragraph 72. However, whether the Council in that case could not refuse planning permission for development '*on sustainability grounds if it met the requirements of Paragraph 71a) and 71b)*' was a matter taken under the heading, and in the context of, the then Framework paragraph 71. The Inspector also considered the relevant development plan policy (bearing in mind s38(6)⁵) which in that case, and on the face of it, was concerned with safeguarding the open countryside, not travel sustainability. The circumstances of that appeal are not, therefore, comparable. I have, in any event, considered the current appeal and the proposal on its individual planning merits.

Delivery

19. I appreciate that the appellant originally intended to secure entry-level affordable housing '*by way of a s106 legal agreement*' and has sought to engage with the Council to this effect. Nevertheless, the timing requirements for executed planning obligations in appeals are clear⁶ and I am not aware of any very exceptional circumstances that warrant further delay in this case. I have been provided with an unsigned, undated and incomplete unilateral undertaking. Accordingly, and notwithstanding the Council's comments on the unilateral undertaking, there is no suitable planning obligation before me to deliver entry-level affordable housing. In these circumstances, the proposal would not comply with Framework paragraph 72 a).
20. Taking all of the above into account, and notwithstanding that the site is adjacent to North Chailey for the purposes of Framework paragraph 72 b), I find that the site is not an appropriate location for entry-level affordable housing and that, in any event, the proposal would not deliver this type of housing. It would not comply with LPP2 Policy DM1 or with Policy CP13 of the Lewes District Local Plan Part 1, May 2016 (the 'LPP1'). These policies include that development should be in a sustainable location and minimise or reduce the need to travel, particularly by car, unless there is an overriding need for it to be in a less accessible, in this case countryside, location.

Character and appearance

21. The appeal site faces the A272. It slopes down on lower ground behind and undulates across its width to form a hollow. On one side is the outlying end of a row of dwellings which extends in distance from the centre of North Chailey fronting the A272. Some houses are also positioned in-depth behind, along Coldharbour Lane and nearby Hazeledene Lane. On the other side, separated by a fence, hedgerow and some trees, is a much larger field and then the start of outlying residential development that extends in distance from the centre of Newick. The undeveloped, open countryside at this point is locally distinctive and makes a significant contribution to maintaining the discrete identity of these two settlements.

⁴ APP/H1840/W/19/3226263

⁵ Planning and Compulsory Purchase Act 2004 (as amended)

⁶ The Planning Inspectorate Procedural Guide Planning Appeals – England, March 2021

22. The proposed layout would complete the partial frontage of dwellings along the east side of Coldharbour Lane and 'round off' this wider block of residential development behind the A272. The site would not be in an isolated location. Some of the dwellings would be on lower parts of the site at the rear, or within the hollow, and I accept that smaller houses and plots may be necessary to achieve the desired entry-level housing. Satisfactory details of the appearance of the dwellings and landscaping of the site could be resolved as part of a reserved matters application. I also appreciate that the large field would remain on the far side of the site, and that it, and the site, form no part of any designated 'important gap'. The south side of the A272 at this point would remain as countryside.
23. However, in the proposed layout, the upper floor and roof of some dwellings (if two-storey in scale) or roof (if single-storey) would project above the boundaries of the site or occupy the backdrop of spaces between, or over, trees and hedgerow or behind and above fences. On the western side of the site this would be observed from Coldharbour Lane. In addition, along the eastern edge of the site and towards the front, dwellings would be in plain view from the A272 and its footways in both directions, as would the 'estate' style access and internal road. The substantial quantum and spread of built form across most of the site would, therefore, adversely alter the fundamental nature of the site from countryside to urban. This would result in a clear and obvious progression of a more densely and unduly conspicuous built-up extent of North Chailey along the road frontage in this direction.
24. Despite the intervening field boundary, the innate openness of the site and its rural nature are an integral overall part of this natural green gap. It is therefore important for this reason. In particular, that part along the north side of the A272 road corridor where the gap is at its narrowest and most publicly visible. The proposed layout would unduly erode a substantial proportion (almost half) of this part. Given that it is already not a very wide gap at this point, it would therefore significantly reduce the visual and spatial separation between the fringes of North Chailey and Newick. This would have the undesirable effect of further merging the extent of existing development in both directions and be at odds with maintaining the separate setting and identity of these two settlements.
25. Considering the above, I find that development of the appeal site by 18 dwellings would harm the character and appearance of the area, with reference to access, layout and its location in relation to North Chailey and Newick. I also consider that it would not be possible to resolve suitable details of scale in any future reserved matters application and that such details, even combined with landscaping, would not overcome the harm that I have identified. It would not comply with LPP2 Policy DM1 or LPP1 CP10. These policies seek to protect the character and quality of the countryside, including the natural environment and locally distinctive landscape qualities.

Highways access and layout

26. Notwithstanding the Council's objection on traffic generation, the Highway Authority⁷ (the 'HA') found that the 'level of trips will not result in a severe impact on the highway or surrounding transport network'. In the absence of any objective evidence to the contrary, I have no reason to disagree.

⁷ East Sussex County Council consultation, 15 December 2020

27. While there is no record of accidents at this specific point on the A272, a new access would be created onto this fast, busy unlit main road. It would be relatively close to existing accesses, including, on one side Coldharbour Lane, and almost opposite another used by horse lorries or trailers and horses with riders. In the other direction a bus stop layby means a waiting bus would partially obstruct the visibility splay and sightline of drivers exiting the site. As well as reduced warning of approaching traffic, drivers would also need to contend with pedestrians seeking to cross the road and cyclists. There would, therefore, be a high degree of complexity at the access. However, the appellant has not submitted a Road Safety Audit, as is required by the HA, or specifically explained why not. I cannot, therefore, be certain that the siting, layout and design of the access would be suitable and appropriate.
28. The internal road would be relatively lightly trafficked with low vehicle speeds and good intervisibility. However, use of some car parking spaces would be limited by proximity to walls or fences or arrangement in tandem, and visitor and disabled spaces are not explicitly shown. There are no dropped kerbs, tactile paving or footway on both sides of the internal road. The swept path analysis is based on a non-standard size refuse vehicle and there is uncertainty about how the turning of such a vehicle has been portrayed, thus the extent of kerb overhang. As a result, some occupiers or visitors, in particular children, parents with pushchairs and the disabled or visually impaired, and some car users, are likely not only to be unduly inconvenienced but exposed to significantly greater hazard and risk of injury.
29. Consequently, I find that the appellant has not demonstrated that the development would be acceptable in highways terms, having regard to access and layout. The Council has not referred to any relevant development plan policies in this regard. It would not comply with Framework paragraphs 110 b), 111 and 112 a), b), c) or d). These include that development should provide safe and suitable access for all users, give priority to pedestrian movements, address the needs of people with disability and reduced mobility, minimise the scope for conflict between all road users and allow for efficient deliveries and access by service vehicles.

Surface water drainage

30. The site is not within an area identified at risk of flooding, including from surface water. Nonetheless, it slopes and is on a ridge of higher ground. Given the significant amount of impermeable area proposed, surface water run-off has the potential to adversely affect the proposed development and its occupiers or to increase flood risk elsewhere (including for neighbours) if it is not managed appropriately.
31. While I have no reason to doubt the integrity of the modelling that has been undertaken, or the broad underlying geology identified, the appellant has not specifically explained why on-site infiltration testing or ground water monitoring has not informed the proposed surface water drainage strategy and plan⁸. This is the main objection of the Council, further to advice from the Lead Local Flood Authority⁹, sustained at appeal, about potential local variation in geology. Moreover, in the event that infiltration is not possible or does not result in a greenfield run-off rate, there is no evidence to suggest an

⁸ Bellamy Roberts Flood Risk Assessment, September 2020

⁹ East Sussex County Council consultation, 3 November 2020

alternative solution to surface water drainage. I cannot, therefore, be certain that the strategy would be appropriate and could be implemented at the site.

32. Consequently, I find that the appellant has not demonstrated that the development would make satisfactory provision for surface water drainage, with respect to layout. It would not comply with LPP1 Policy CP12. This policy seeks appropriate management of surface water run-off and to ensure no increase in surface water run-off from new development.

Conclusion on the main issues

33. The development is specifically for 18 dwellings. Future details of appearance, landscaping and scale would also be prescribed by the submitted details of access and layout. However, I consider that my findings in the main issues above could have fundamental consequences for whether the site can be used at all for housing (thus the principle of the development) or as is intended without significant amendment to access or layout. Accordingly, as these details are for consideration now, and would otherwise be 'fixed' were I minded to grant outline planning permission, I am not satisfied that the appellant has demonstrated that an acceptable scheme could be reconciled at a reserved matters stage. Nor would it, therefore, be reasonable to relegate any of these matters to approval by condition.

Other Matters

34. Even with a site management plan, some construction works can adversely affect the living conditions of existing residents. It is, though, an almost inevitable consequence of development and would be temporary in duration. The development would be in close proximity to some existing dwellings and result in a noticeable change to the local living environment for some residents. However, some noise or other disturbance from normal domestic activity where none exists now is not unusual or uncommon as a result of new development and, to some extent, to be expected. The Council has separate powers to seek to control statutory nuisance. Loss of private views towards the countryside and impact of development on property values are not material planning considerations.
35. Some trees would be removed, but there is no objective evidence before me to suggest that there would be any significant harm to biodiversity at the site. Nor is there any compelling evidence that it is necessary to safeguard the route of the former railway line for any imminent or programmed planned transport use. Any necessary re-alignment of overhead cables and the supply of adequate public services would be a private matter between the appellant (or developer) and the relevant statutory body.

Planning Balance

36. In terms of benefits, while there is no 5-year housing land supply shortfall, the provision of 18 dwellings would nonetheless make a notable contribution to the Council's housing supply. This would be aligned with the Framework's objective to significantly boost the supply of homes. Despite that there would be no benefit in this appeal from the provision of entry-level affordable housing, the social, economic and environmental benefits associated with building and occupying the dwellings, which would likely be well-designed, high quality in

appearance and set within a landscaped site, are factors which carry moderate weight in the scheme's favour.

37. There are no heritage constraints and the site is not in an Area of Outstanding Natural Beauty or a National Park. It is likely that potential overlooking, loss of privacy and effect on natural light could be addressed in details of the appearance or scale of the dwellings and, as a result, not have an adverse impact on the living conditions of local residents. The absence of harm, and compliance with development plan policies and the Framework in these respects, are neutral factors in my decision.
38. However, it has not been established that the site could be developed for housing given its former use and uncertainty about ground conditions. The proposal would not be well-related to a planning boundary or sustainably located and the site would not be an appropriate location for housing in these terms. The development would enlarge North Chailey by encroaching into the countryside, reduce the influence and function of the green gap between it and Newick and cause significant harm to the character and appearance of the area. It is also not clear whether a safe and suitable access could be achieved, or if the internal road would be satisfactory in layout, to avoid significant harm to all road users and future occupiers. Nor has it been established that surface water drainage would not cause significant harm to occupiers, neighbours and property.
39. In these circumstances, the proposal would not comply with the Council's development plan or objectives of the Framework to make effective use of suitable land for housing development having regard to ground conditions, location and accessibility, highway safety and drainage. Nor would it accord with Framework objectives that development should be sympathetic to local character, including landscape setting, maintain a strong sense of place or a distinctive place to live and it would not result in a high standard of amenity for existing and future users. It would not conserve or enhance the natural environment and protect the intrinsic character and beauty of the countryside. I give substantial weight to each of these considerations.
40. The proposal would conflict with relevant development plan policies, which are consistent with the Framework, and would diminish the Council's objectives in these regards. Consequently, I consider that the adverse impacts would significantly and demonstrably outweigh the benefits in this appeal.

Conclusion

41. The proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
42. For the reasons given above, I therefore conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR