



Appeal Decision

Site visit made on 11 January 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/Z3825/W/21/3274850

Land at Church Road, Mannings Heath RH13 6JE

- 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 Mrs Albery against the decision of Horsham District Council.
 - The application Ref DC/20/0579, dated 19 March 2020, was refused by notice dated 13 November 2020.
 - The development proposed is described as 'Outline application for the erection of 2no. detached dwellings with all matters reserved.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form and decision notice which reflect the change in the description of the development agreed by the parties during the course of the planning application, which reduced the number of dwellings proposed from 3 to 2.
3. Outline planning permission is sought with all matters reserved for future consideration. I have therefore taken any indication of the reserved matters shown on the submitted drawings to be illustrative, including those which were submitted during the course of the planning application to respond to the change in the description of development.
4. Additional ecological information has been submitted by the appellant during the course of the appeal. The Council has been provided with the opportunity to comment on this information and I have taken into account their response in my assessment of the appeal.
5. The Council have submitted late evidence and have added a reason for refusal to their case since the submission of the appeal. This follows the receipt of information by the Council relating to the potential effect of the development on the Arun Valley designated conservation sites from water abstraction. The appellant has had the opportunity to review and comment on the Council's evidence I have taken the comments of the main parties into account in the determination of this appeal. This is a matter I return to under Other Matters below.
6. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. There are no substantive changes relevant to

the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2021 version of the Framework.

Main Issues

7. The main issue is the effect the development would have on wildlife habitats, with particular regard to great crested newts, dormice and bats.

Reasons

8. The appellant's Ecological Constraints Assessment (ECA) of May 2021 advises that the site is dominated by dense scrub including dense and tall bramble, hazel, hawthorn, blackthorn and some scattered coniferous and broadleaved trees. The site adjoins the gardens of residential properties to the north and areas of grassland and woodland exist further to the south and west. There are six ponds located within 250m of the site, of which the closest is approximately 5m from the northern site boundary.
9. In light of the ability of the proposed development to affect biodiversity on the site including legally protected species, it is important that up-to-date information is available to effectively evaluate the impacts of the development. I agree with the Council that information dating from 2017 may be unreliable and may not accurately reflect the current circumstances of the site.
10. The site provides suitable habitat for great crested newts, and those two ponds closest to the site have good suitability for breeding. The appellant has identified the presence of great crested newts in the nearest pond and the information available suggests that due to the proximity of the surveyed pond to the appeal site, the ease of potential movement between the pond and the site, and the good quality habitat for great crested newts on the site, there is a strong likelihood of great crested newts being present on the appeal site. The development proposed would therefore be likely to result in a number of impacts on the species, arising during site clearance, construction and post construction phases.
11. The main parties agree that mitigation for great crested newts is therefore required. I appreciate that the appellant is not yet sure which route for mitigation they will pursue due to delays in the launch of the local District Level Licencing scheme. However, the Preliminary Ecological Appraisal concludes that, depending on the licencing route chosen, further surveys for great crested newts may be required to assess the impact of the development on the species and to implement suitable mitigation. I consider that in the absence of the survey data from the site, the extent of the impact on great crested newts cannot be fully established nor can it be determined that the proposed mitigation would be effective. This is exacerbated by the lack of confirmation of a suitable and acceptable receptor site for this species, should it be necessary.
12. The site has also been found to provide suitable habitat for hazel dormice and the site is moderately well-connected to adjoining habitats for this species. Despite the difficulties identified by the appellant for surveying dormice on this particular site, Natural England's advice does not preclude smaller sites and contains recommendations for such cases. While the proposals would see the continued existence of other quality habitat in the local landscape, I am of the view that in the absence of information relating to the extent of dormouse populations on the site and the surrounding area, it cannot be established that

the proposed precautionary approach would be adequate to mitigate the impacts of the development.

13. With regard to impact on bats, the appellant has identified that the site provides suitable habitat for foraging and commuting bats and one tree on the western boundary is suitable for roosting bats. The appellant has confirmed that there is no intention to remove or cut back this tree. As this tree is located on the edge of the site this could reasonably be secured by a planning condition if the proposals were otherwise acceptable. I am therefore satisfied that no further surveys of roosting bats would be necessary, in line with the recommendations of the appellant's report. Details of external lighting, which could impact upon foraging and commuting bats within the site, could adequately be addressed at the reserved matters stage, once the final locations and detailed design of the development is known, to ensure that appropriate mitigation is delivered.
14. In the absence of survey data relating to great crested newts and dormice, the impacts of the proposed development on these species, and the effect on biodiversity in the vicinity of the proposed development, cannot truly be established and there is uncertainty regarding the level of mitigation required and how effective any such mitigation may be. I therefore find that, in the absence of such information, the development would cause harm to those species, contrary to policy 31 of the Horsham District Planning Framework 2015 insofar as it seeks to contribute to the enhancement of existing biodiversity and create new habitats.
15. I have considered whether this harm could be addressed through the imposition of planning conditions. Based on the evidence available, there is a very strong likelihood of these species being present on the site. In line with the advice of Circular 06/2005, surveys should be carried out before planning permission is granted. For this reason, and in the absence of any exceptional circumstances, I do not consider that it would be appropriate in this case for such surveys to be conditioned. I have noted that the Council granted planning permission for development on an adjacent site which included conditions relating to ecology and securing, among other things, details of a Natural England license or a statement if not required, and further supplementary surveys of badgers. I have not been provided with full details of this nearby development or the level of detail that was contained within its ecological documents. I am therefore unable to conclude that the circumstances were similar or that this provides a reason to accept the required surveys by condition in conflict with contrary to Circular 06/2005.
16. I appreciate the potential need for a licence from Natural England in respect of the development proposed. However this is separate from any planning permission, and does not provide adequate reason for me to conclude that the proposals are acceptable in planning terms. In light of the uncertainty as to whether such a license would be granted for the proposed development, I do not consider it would be reasonable to secure a license by condition.

Other Matters

17. Comments have been received by the Council from Natural England since the Council made its decision, in respect of the impact of water abstraction on the wildlife sites in the Arun Valley. The proposals would introduce two new homes

on the site which would be likely to increase demand for water. However, as I am dismissing the appeal for the reason of harm to protected species, this is not a matter that I need to consider further.

18. As set out above, matters relating to access, appearance, landscaping, layout and scale are reserved for future consideration and do not form part of this appeal. In addition, I note the Council considered the principle of the development, density, flood risk, local traffic and impact on the existing trees and, having regard to the comments of statutory and non-statutory consultees, raised no concerns regarding these matters. From my assessment I have no reason to disagree.

Conclusion

19. For the reasons discussed above, the proposals would have the potential to cause harm to the existing wildlife habitats on the site, in particular those of great crested newts and dormice. I attach significant weight to these harms. In light of the conflicts identified with policy 31 of the Horsham District Planning Framework, the development would not comply with the development plan as a whole. This conflict is not outweighed by other material considerations in this instance. The appeal should therefore be dismissed.

C Shearing

INSPECTOR