



Appeal Decision

Site visit made on 15 February 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2022

Appeal Ref: APP/Z3825/W/21/3280286

**Land At Former Swallowfield Nursery, Church Road, Mannings Heath
RH13 6HY**

- 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 Mr White (Boughtonwood Homes Ltd) against the decision of Horsham District Council.
 - The application Ref DC/20/1698, dated 4 September 2020, was refused by notice dated 16 June 2021.
 - The development proposed is erection of 9 dwellings, car-ports and garages, landscaping and associated works including access improvements previously consented under planning ref: DC/17/1158, to widen the access junction with Church Road and create a passing area.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 9 dwellings, car-ports and garages, landscaping and associated works including access improvements previously consented under planning ref: DC/17/1158, to widen the access junction with Church Road and create a passing area at land at former Swallowfield Nursery, Church Road, Mannings Heath, RH13 6HY in accordance with the terms of the application, Ref DC/20/1698, dated 4 September 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters and Main Issues

2. The site benefits from planning permission for the erection of 7 dwellings, car ports and garages and associated works (hereafter referred to as the approved development). On my visit, I saw groundworks have already been carried out and the appellant indicates these follow the discharge of pre-commencement conditions attached to the existing permission. Therefore, it appears the approved development has partially commenced. The fallback position provided by the approved development is a material consideration in this appeal.
3. The Council's decision notice sets out a single refusal reason that relates to the effect on the character of the area. In its appeal statement, the Council has introduced an additional concern regarding the effect of the proposal upon the integrity of the Arun Valley Special Area of Conservation (SAC), Arun Valley Special Protection Area (SPA) and Arun Valley Ramsar site (the Ramsar). The appellant has responded to the Council's further concerns. Natural England (NE) as the relevant statutory nature conservation body has been consulted and the main parties have had the opportunity to comment on its response.

4. In light of the above, the main issues are (i) the effect of the development on the integrity of the SAC, SPA and the Ramsar site (hereafter called the habitat sites), and (ii) the effect on the character and appearance of the area.

Reasons

Habitat sites

5. The SAC, the SPA and the Ramsar site have been designated for their nature value. The SAC includes the rare and threatened little whirlpool ram's horn snail and its supporting wetland habitats. The SPA also includes wetlands which support an assemblage of wintering wildfowl. The Ramsar site is noted for its wintering birds, rare invertebrates and aquatic plants.
6. In September 2021 and after the application had been determined, NE issued a position statement. This advises that the effects of groundwater abstraction within the Sussex North Water Supply Zone (SNWSZ) cannot be objectively demonstrated to be compatible with the conservation objectives of the habitat sites, by virtue of reduced water levels and potential water quality impacts. NE advise that currently, the habitat sites condition is unfavourable. The SAC is failing its conservation objectives for the range and distribution of the snail species and in the main the SPA and Ramsar are not meeting their conservation objective in respect of wintering bird population targets. Moreover, NE is concerned that extra development within the SNWSZ will increase abstraction and further exacerbate the adverse impacts.
7. The appeal site lies in the SNWSZ and the supply of water to the proposed houses would lead to more groundwater abstraction than is currently the case. The appellant does not dispute the NE's concern that water usage and abstraction associated with the development is likely to have a significant effect on the hydrology of the habitat sites and so affect their qualifying features, either on its own or in combination with other projects. As the conservation objectives of the habitat sites may be undermined, it is necessary for me to conduct an appropriate assessment under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) as to the effect of the development on the integrity of the habitat sites.
8. The NE position statement advises that new development should achieve water neutrality to avoid a detrimental impact on the habitat sites. The appellant's Water Neutrality Statement (WNS) acknowledges that it is likely the current proposal would lead to more residents on the site and a potential increase in water usage compared to the approved development. As mitigation, it is proposed to provide the dwellings with various water efficient fixtures. Also, in recognition that such fittings may be changed once the units are occupied, rainwater harvesting systems to supply water for non-potable uses would also be incorporated. The evidence indicates that such features would lead to an overall reduction in water usage compared to the approved development, despite the fact that the appeal proposal would include more dwellings.
9. NE considers it is appropriate to adopt the appellant's approach of using the approved development as a baseline for calculating a water budget. I agree, given the development allowed under the existing planning permission has commenced and the strong likelihood of it being completed should this appeal be dismissed.

10. Moreover, NE advise that the WNS demonstrates that water neutrality compared to the approved development could be achieved through the proposed water efficient fixtures and rainwater harvesting systems. As part of an appropriate assessment, the Regulations require me to have regard to measures that could be delivered so as to avoid adverse effects on the integrity of protected sites. Further information on the detailed design of the rainwater systems is needed but it would be reasonable and appropriate to impose a planning condition that requires the approval of such details and the provision of the proposed water efficiency measures. Such a condition would be strict enough to ensure the development achieves water neutrality.
11. For the above reasons, I conclude the development would not adversely affect the integrity of the SAC, the SPA and the Ramsar site. In these regards, it would accord with policy 31 of the Horsham District Planning Framework 2015 (DPF). Amongst other things, this seeks to ensure that proper consideration is given to the effect of development on protected nature conservation sites.

Character and appearance

12. The main part of the appeal site is at the end of a drive and set well back from the public highway. Dwellings adjoin the site to the north while Swallowfield House is adjacent to its southern boundary. Nearby fields, trees and hedges provide a semi-rural feel to the locality but the site is on the edge of the village, close to a reasonably dense pattern of development and a mix of residential properties.
13. Due to the separation from the highway and intervening vegetation, the proposed houses, garages and car ports would not be easily seen from Church Road. The development would be visible from the adjoining dwellings, although it would be partially screened by existing and proposed planting. As such, it would have a fairly localised visual impact and it would not appear dominant.
14. The proposed houses would face towards a central courtyard area. In terms of building footprint and plot sizes, the dwellings on the south and west sides of the courtyard would be very similar to the corresponding dwellings in the approved development. Significant areas of trees and vegetation towards the boundaries of the site would be retained and included in a landscape management area. These and the back gardens to the dwellings would help ensure the development retains a degree of vegetated openness.
15. On the north side of the courtyard, the houses on plots 1 to 4 would form a short terrace, unlike the approved development that includes a pair of bungalows in the equivalent position. The terrace would be of a simple form with the aim to reflect the appearance of a threshing barn. It would include traditional agricultural building details such as weatherboarding and plain tiled roofs to reinforce this effect. The terrace would be larger than the approved bungalows but it would respond to the semi-rural character of the area through its design. Moreover, the terraced form of building is already seen nearby at 1 to 4 Church Road and elsewhere along the road.
16. The individual back gardens to the units on plots 1 to 4 would be narrower than those for the 2 bungalows on the approved development. However, the total garden space would be comparable and any extra fencing and paraphernalia as a result of the additional plots would be largely screened by the houses and features on the boundary of the site. Therefore, a visual sense of openness to

the rear of the terrace would be provided so as to prevent the development from appearing unduly cramped.

17. The amount of proposed hardstanding would be similar to that included in the approved development and a large part would be within the courtyard and screened by the surrounding buildings. Accordingly, it would be suitable to its context. The proposal would lead to extra parking compared to the approved development and a proposed car port to the side of the house on plot 1 would increase the amount of building coverage. However, this would cause a relatively minor loss of openness, which would have no meaningful impact on the visual qualities of the site or the wider area.
18. Policy 2 of the Nuthurst Parish Neighbourhood Plan 2015 (NP) states that residential development of the site should primarily consist of semi-detached houses or bungalows. However, it does not preclude other types of dwellings such as terraced units. The supporting text to NP policy 2 refers to a scheme that may comprise 4 to 7 dwellings. However, this does not form part of the policy itself and the use of the word “may” indicates that the given range is not a firm requirement. No part of the policy or its supporting text indicates that 9 dwellings would inevitably be detrimental to the character of the area.
19. A proposal for 3 houses on land near to the driveway access on Church Road was refused planning permission under appeal decision reference APP/Z3825/W/17/3184807. The Inspector found this development would cause harm to the character and appearance of the area. However, unlike the current proposal, this previous scheme relates to a more prominent site nearer to the public highway and there was no fallback position. As such, I am not bound by the previous decision to arrive at a similar view on this appeal.
20. For these reasons, I conclude the development would not harm the character and appearance of the area. In these regards, it would accord with DPF policies 32 and 33 and NP policies 2 and 10. Amongst other things, these seek to ensure development is of a high quality and reflects the character of the surrounding area.

Other Matters

21. A number of other concerns have been raised. The site would be a suitable location for the proposal given that it is allocated for residential uses under NP policy 2. Moreover, the Council indicates that it is unable to demonstrate a 5 year supply of housing land as required by the National Planning Policy Framework (the Framework). In such circumstances, the development’s contribution to the housing stock attracts positive weight in my assessment.
22. There is no justification to find that the vehicular trips generated by the proposal would have an unacceptable impact on highway safety. Visibility at the access is good and so I see no reason why traffic movements associated with the scheme would cause confusion at the nearby road junction.
23. It is suggested that Swallowfield House should be treated as a non-designated heritage asset, although there is limited evidence to show how it has been identified as such and why it is significant. In any event, the proposal would be screened from the neighbouring property by existing and proposed vegetation and it would have a similar effect on Swallowfield House compared to the

- approved development. Accordingly, I find no harm would be caused to its setting or its significance.
24. There is no evidence the site is subject to unacceptable flood risk and appropriate drainage could be secured by planning condition. The existing and proposed vegetation screening on the edges of the site as well as the separation distances would ensure the proposed houses avoid unacceptable effects on the living conditions of occupiers of any existing residence.
25. A pond on the site is identified as containing great crested newts (GCNs), a protected species. The Regulations impose a duty on me to consider whether a European Protected Species (EPS) would be affected by the proposal and whether mitigation would be effective. In carrying out this duty, I am required to take account of the 'derogation tests' set out in regulation 55 of the Regulations. These would need to be met for a EPS licence to be issued.
26. Various mitigation measures are referred to so as to reduce the risk of GCNs being harmed during development works. The Council raise no objections to the proposed mitigation and there are no grounds to find the conservation status of the species would be undermined by the proposal. Moreover, since the appeal was lodged, NE has issued a EPS mitigation licence in respect of the approved development and all ecological monitoring has already been carried out. As such, I find no unacceptable harm would be caused to GCNs.
27. The Council raise no objections to the effects on any other EPS including bats or on other features of biodiversity interest such as deciduous woodland. The Council accepts that proposed planting and enhanced habitats would lead to a net gain in the condition of green infrastructure and the biodiversity value of the site. Subject to the imposition of a planning condition that requires further details on planting and enhancement measures, I find no substantive reason to disagree with the Council on these issues. In arriving at this view, I have had regard to the fallback position provided by the approved development and the similar effects it would have on the ecological value of the site compared to the appeal scheme.
28. In the absence of firm reasons to dismiss the appeal on any of the above grounds, the concerns raised do not affect my overall conclusion.

Conditions

29. The Council has provided a list of suggested planning conditions, which I have considered having regard to the tests set out in the Framework. Where appropriate, I have amended the wording for precision reasons and to avoid unnecessary pre-commencement conditions. The appellant contends that many of the conditions are unnecessary as similar have been attached to the planning permission for the approved development and are already discharged. However, not all of the details submitted pursuant to these conditions have been provided as part of this appeal and so I am unable to assess whether they are acceptable.
30. A condition setting out the approved plans is imposed for reasons of clarity and to ensure the development is carried out as proposed. A construction management plan is needed to avoid harm to the living conditions of nearby residents, the environment or highway safety. Such a plan has been agreed by the Council under the terms of the planning permission for the approved

development. I impose a condition that requires the same plan to be adhered to during the construction of this appeal development. The approved plan includes details of hours of work and a scheme for disposing of waste and so there is no requirement for other conditions on these matters.

31. As a EPS licence has already been issued by the NE in relation to the approved development, there is no need for the suggested condition in this respect. Also, there is little justification within the submissions to explain the need for further badger surveys or measures to protect badgers during construction, particularly as works have already commenced on the site. As such the suggested conditions in these respects have not been imposed.
32. However, to ensure the development preserves and enhances the general biodiversity value of the site and respects the character of the area, a condition is included that requires a landscape and ecological strategy. This incorporates relevant and necessary parts of the suggested conditions that refer to retained trees and planting, soft landscaping works, ecological design strategy, biodiversity enhancement strategy and a landscape and ecological management plan.
33. In light of my findings in respect of the first main issue, a condition is included that requires the provision of water efficient fixtures and fittings and rainwater harvesting systems in line with the provisions of the WNS. Also, to ensure water resources are dealt with properly, a condition is imposed regarding surface and foul water drainage systems.
34. To ensure a satisfactory appearance, conditions are attached regarding details of the external materials and hard landscape features. To deliver a sustainable development in accordance with DPF policy 37, a condition is imposed that requires the provision of high speed broadband. A condition on parking and turning areas is needed in the interests of highway safety. To promote the use of more environment friendly forms of transport, conditions regarding electric vehicle charging points and cycle parking are required. Also, a condition is imposed to help prevent the unsightly storage of waste.
35. Conditions are suggested that require a scheme to deal with potential ground contamination on the site to be submitted and approved. However, I am advised that no such conditions were attached to the planning permission for the approved development. There is limited information before me to illustrate a significant risk of ground contamination and the site has been cleared and the subject of extensive groundworks. As such, I am unconvinced that the conditions regarding ground contamination surveys, remediation, verification of works and testing of imported or re-used soils are necessary or reasonable.
36. Also, a condition is suggested that would remove some of the permitted development rights for dwellings. However, there is little evidence to demonstrate that such rights if implemented would lead to an unacceptable effect on the visual qualities or character of the area. Without such justification, such a condition would be unnecessary and so it has not been imposed.

Conclusion

37. I have found the development would be acceptable in respect of the 2 main issues and that there are no other reasons that justify a refusal of planning

permission. Therefore, the proposal would accord with the development plan policies when read as a whole and so I conclude the appeal should succeed.

Jonathan Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 19131/S101B, 19131/C101B, 19131/C102A, 19131/C103, 19131/P101D, 19131/P103A, 19131/P104, 19131/P111A, 19131/P112A, 19131/P113A, 19131/P114A, 19131/P115A, 19131/P116, 140235-TK01 revision C, 140235-TK02 revision C, 140235-TK03 revision B.
- 3) Throughout the construction period for the development, the measures as set out in the Construction Management and Transport Plan rev B as deemed acceptable by Horsham District Council by letter dated 12 January 2022 with reference DISC/21/0281 shall be adhered to.
- 4) No construction works above ground floor slab level of any part of the development hereby permitted shall commence until a landscape and ecological strategy plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of how the loss of priority broadleaved woodland is to be addressed as well as the following:-
 - i) purpose and conservation objectives of the proposed works;
 - ii) detailed designs and working methods to achieve stated objectives;
 - iii) location and details of proposed biodiversity enhancement measures;
 - iv) details of all trees and planting to be retained on the site;
 - v) details of new features to be planted, including schedules specifying species, planting sizes, densities, plant numbers and tree pit details;
 - vi) timetable for implementation of the proposed works demonstrating that they are aligned with phasing of the development hereby permitted;
 - vii) details of initial aftercare and long-term management and maintenance of the retained and proposed planting and communal landscape areas;
 - viii) details of the body or organisation responsible for the implementation of the works and management;
 - ix) details for monitoring and remedial measures.

The submitted details shall accord with the enhancement measures and works contained in the Ecological Impact Assessment produced by The Ecology Partnership and dated September 2020 and The Ecology Partnership letter dated 10 December 2020. The development shall be

carried out, managed and maintained in accordance with the approved strategy plan.

- 5) No construction works above ground floor slab level of any part of the development hereby permitted shall commence until details of the specific water efficient fixtures and fittings and details of the rainwater harvesting systems to be installed at each of the dwellings hereby approved have been submitted to and approved in writing by the local planning authority. The details shall be supplemented by accurate water consumption data that show how the water usage targets as set out in the Water Neutrality Statement dated January 2022 will be achieved. None of the individual dwellings hereby permitted shall be first occupied until the associated water efficient fixtures and fittings and rainwater harvesting systems as approved have been installed. Thereafter, the fixture and fittings and systems shall be retained or only replaced with items of the same or better water efficiency rating.
- 6) No construction works above ground floor slab level of any part of the development hereby permitted shall commence until details of the drainage system for foul and surface water disposal have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No construction works above ground floor slab level of any part of the development hereby permitted shall commence until details of materials, including finishes and colours, to be used for external walls, windows, doors and roofs of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) No construction works above ground floor slab level of any part of the development hereby permitted shall commence until details of all hard landscaping works have been submitted to and approved in writing by the local planning authority. These shall include details of all hard surfacing materials and finishes, boundary treatments and external lighting including a bat sensitive lighting scheme. The development shall be carried out in accordance with the approved details.
- 9) Prior to the first occupation or use of any part of the development hereby permitted, the parking, turning and access facilities as shown on the approved plans shall be provided and they shall thereafter be retained for such uses.
- 10) No individual dwelling hereby permitted shall be first occupied until the necessary infrastructure to enable superfast broadband speeds of 30 megabytes per second through full fibre broadband connection is provided to the premises. Thereafter the infrastructure shall be retained.
- 11) No individual dwelling hereby permitted shall be first occupied until a fast charge electric vehicle charging point for that dwelling has been installed. As a minimum, the charge point specification shall be 7kW mode 3 with type 2 connector. Thereafter, the means for charging electric vehicles shall be retained.
- 12) No individual dwelling hereby permitted shall be first occupied until the cycle parking facilities serving it have been provided within the garage or

side or rear garden for that dwelling. Thereafter, the facilities shall be retained for such use at all times.

- 13) No individual dwelling hereby permitted shall be first occupied until provision for the storage of refuse and recycling has been provided within the garage or side or rear garden for that dwelling. Thereafter, the facilities shall be retained for such use at all times.