



Appeal Decision

Site visit made on 20 June 2022

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/Z3825/W/22/3290855

Richmond House, Rye Farm Lane, Barns Green RH13 0QB

- 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 Bruce McLeod against the decision of Horsham District Council.
 - The application Ref DC/21/1313, dated 3 June 2021, was refused by notice dated 7 January 2022.
 - The development proposed is the erection of 2 zero carbon self-build properties to Passive Haus standard.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues with this case are
 - a) the development's effect on the spatial strategy and on the character and appearance of the area;
 - b) the impact on highway safety;
 - c) whether it would result in acceptable living conditions for the future occupiers and its effect on neighbouring activity;
 - d) its impact on biodiversity, and
 - e) whether it would have likely significant effects, whether by itself or in combination with other plans and proposals, on the Arun Valley Special Area of Conservation (SAC) and Special Protection Area (SPA).

Reasons

Spatial strategy and character and appearance

3. Policies 1-4 in the *Horsham District Planning Framework* (the HDPF) collectively seek to focus new development within settlement boundaries. This is for a number of reasons that include safeguarding the countryside, supporting local services, and ensuring housing in sustainable locations. HDPF Policy 26 also aims to protect the countryside from 'inappropriate' development.
4. Barns Green is identified as a medium village, so has a moderate level of services and facilities that can provide for some of its residents' day-to-day needs. While the signage announcing the 30mph speed limit is by the appeal site, such signage is positioned for many reasons and need not mark the

settlement edge for planning purposes. Rather, the Council says the site is some 600m outside of the built-up area boundary for the village (as defined in the HDPF) and I have no reason to consider otherwise. Accordingly, I find the development would be outside of the settlement in planning terms.

5. The lane is relatively narrow given it carries 2-way traffic, and between the site and the village it has limited pavements and street lighting. Mindful of the intervening distance, it is therefore unlikely people would use it to walk regularly from one to the other. There is also a public right of way running into the village from the site. That was a pleasant route when I visited on a sunny summer's afternoon, but its distance, its surfacing, its secluded nature, and the lack of lighting all mean it would not be one that residents could be expected to rely on to walk to and from Barns Green throughout the year. As a result, housing on the appeal site would give rise to increased reliance on the use of private motorised transport. Therefore, this would be an unsustainable location for housing that would be contrary to the District's spatial strategy.
6. Furthermore, although located next to a cluster of other buildings, this grassed site lies in an area with a distinctly rural character. I accept that, at present, it is substantially concealed by tall hedging while the height of each proposed dwelling would be reduced by the first floor being contained in the roof. However, the 2 new houses, with their associated paraphernalia and domestication, would nonetheless be visible when passing the access. As a result, although this would be limited to some extent by the site's context, I nonetheless consider that by introducing further housing into this countryside location the development would have an urbanising effect, so eroding the rural character and appearance of the area.
7. The appellants have drawn attention to a previous use of the land for the siting of caravans. I discuss below, under the issue of the effect on the SAC, the likelihood of such a use resuming. However, on the assumption that it did, those on holiday may be expected to travel extensively round the area, whether or not they are staying in a settlement, and such movements would only occur when the site was occupied. In contrast, the movements to address the functional needs of permanent residents are likely to occur throughout the year. They would also be far more focussed on accessing services and facilities necessary for day-to-day life, which tend to be found within towns and villages. Therefore, the travel patterns associated with holiday accommodation are materially different to those of permanent housing. Moreover, their transient character and smaller size means that, visually, the caravans would be less dominant and intrusive than the 2 houses before me.
8. I have no specific objections to the design of the scheme of itself, but that does not overcome the concerns arising from development in this countryside location. I accept that paragraph 80 of the *National Planning Policy Framework* (the Framework) says that Councils should avoid isolated housing in the countryside unless, among other things, the design is truly outstanding, and the proposal would significantly enhance the immediate setting. Even if I apply that paragraph to this case, while high environmental standards have been sought, they do not, of themselves, render the development truly outstanding, and, as reasoned above, I consider it does not enhance the immediate setting.
9. I have noted the planning permissions granted by the Council at Warrenhurst and Dunit. My knowledge of those cases though is limited, and decisions by

the local planning authority do not necessarily bind me in my decision-making. Notwithstanding these points though, on my visit I considered that the Warrenhurst site had a more direct relationship to the village than the site before me that would have facilitated a greater level of accessibility.

10. Accordingly, I conclude that the development would conflict with the spatial strategy and cause harm to the character and appearance of the countryside, in conflict with Policies 1, 2, 3, 4 and 26 in the HDPF.

Highway safety

11. The proposal would be served by an access onto Two Mile Ash Road and, as shown on the submitted plans, the sight splays to the east would fall below those advised. I have no decisive traffic data before me on vehicle movements or speeds at this point. However, the access would be on a relatively straight piece of road with good forward visibility, and approaching traffic does not appear to be going particularly fast due to the nature of the lane and the start of the 30mph limit just beyond the access. Therefore, although I recognise the shortfall in visibility splays, I am not satisfied the use of this domestic access would adversely affect highway safety.
12. The Council said that each house should have 3 off-road parking spaces. There would be opportunity though for any additional demand over-and-above the 2 spaces shown to be accommodated satisfactorily on the site, given the scale of the private drive and its likely intensity of use. I have no basis to find such parking would take place on the public highway, or prevent cars from entering and leaving the site in forward gear.
13. Accordingly, I conclude that the development would not have an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe. As such, the development would not conflict with Policy 40 in the HDPF, which aims to secure a suitable and safe access.

Living conditions

14. The Framework requires that regard is given to the living conditions of future residents when assessing new development, addressing noise pollution and odour among other matters. This is reflected in HDPF Policies 32 and 33, which require an attractive environment that avoids unacceptable harm to occupiers.
15. There has been concern about odour from the stables immediately to the north of the site. I accept that the smell of manure may be detectable intermittently. However, I have no basis to consider that it would be so strong or intrusive as to be unreasonable or unacceptable.
16. Moreover, in 2021 a Certificate of Lawfulness (the Certificate) was granted on part of the neighbouring site for the use of the existing building, curtilage and outbuildings as a dwelling/for residential purposes and for the keeping of dogs, and I have no reason to consider that is not still the lawful use of that land. Although concern has been raised about the effect of noise from this use on the proposed residents of the scheme before me, it has been substantiated with little evidence.
17. The area where that Certificate says dogs were lawfully kept is away from the development, with buildings in between. Whilst I appreciate that statutory nuisance is subject to different tests to those concerning whether a planning

proposal would cause harm to living conditions, I am nonetheless aware that, despite a number of visits, the Council's Environmental Health Officer has not pursued any action against the adjacent site in relation to this matter. On balance, and on the evidence before me, I have insufficient grounds to substantiate a refusal of planning permission for this reason.

18. In coming to this view I have had regard to the Ifield appeal decision submitted by the Council. However in that case the noise from dogs was said to be '*considerable*', even though the kennels were not fully occupied at the time. The evidence before me does not support a similar finding on this site.
19. Moreover, paragraph 187 of the Framework says that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Given the findings of the Council's Environmental Health Officer and the lack of other supportive evidence, I have no reason to come to the view that the proposal would lead to restrictions being imposed on the keeping of dogs or horses next door, even if that is a business.
20. Accordingly, I conclude the development would not create unreasonable living conditions for its future occupiers, or cause unacceptable restrictions to be imposed on the neighbouring site in relation to the keeping of dogs and horses, and so in this regard it would not conflict with Policies 32 and 33 in the HDPF.

Biodiversity

21. The appeal site is in the countryside and so it is expected that it is to be crossed by wildlife and used for foraging. However, it is now a grassed area and the evidence before me implies it has been disrupted and affected by various different activities over the years. I am aware too that opportunity would exist, through the imposition of a condition, to secure various biodiversity enhancements in the scheme. Given these factors, I have no grounds to consider the effect on protected species and habitat would be unacceptable.
22. Accordingly, I conclude that it has not been shown the scheme would have an unacceptable effect on protected species and habitat, and so I have no grounds to conclude it would conflict with Policy 31 on the HDPF, which seeks to promote biodiversity maintenance and enhancement.

Water neutrality

23. The site is in the Sussex North Water Supply Zone, which draws its water supply from groundwater abstraction. Natural England's Advice Note is concerned that on-going abstraction has a detrimental effect on the Arun Valley SAC and SPA. These are low-lying wetland areas that offer a variety of ecological conditions, providing internationally important habitats with outstanding aquatic and invertebrate fauna and supporting important numbers of winter wading birds. As a result, within this zone it cannot be concluded with the required degree of certainty that new development would not have an adverse effect on the integrity of the wetland sites, unless it is demonstrated that the development would achieve a level of water neutrality and so avoid further pressure on water abstraction.
24. The introduction of 2 dwellings onto what is now a grassed site would be expected to increase water demands and ground water extraction. The

- development would therefore have a likely significant effect, when taken with other plans and proposals, on the SAC and the SPA.
25. To mitigate and balance this impact though, the appellants contend that the land subject of this appeal used to be a caravan site for up to 6 caravans. They add that, given the water-saving measures and methods proposed within the scheme, the water consumption for that caravan use would be greater than for the 2 dwellings proposed.
26. Noting the evidence from The Caravan Club and the written confirmation from local residents, I do not doubt the site has had such a use in the past. The absence of any specific planning permission would almost certainly be because the use was deemed 'permitted development'. I understand though that the caravan site has been closed for a few years at least, with the evidence pointing to it being used for this purpose in the 1970s and 1980s. The appellants say the site is presently part of the curtilage of Richmond House and was last used for horticultural and composting purposes (for which no water consumption evidence has been offered). It appears to be accepted by the Council that a caravan use could still be 'permitted development', but it would only be allowed for no more than 28 consecutive days. It is therefore unclear as to whether using the land as a caravan site throughout the year would be lawful as 'permitted development', as the appellants seem to imply, and, if it would be, there is little firm evidence to show there is a real prospect of that occurring if I dismissed this appeal.
27. However, if the caravan use did, in fact, re-start and could operate throughout the year as the appellants imply, it is reasonable to assume that for many days, especially in the winter months, few if any caravaners would be on the site. As a result, at those times there would be little, if any, water demand. Indeed, if 'permitted development' rights allowed the caravan site to be on the land not for a complete calendar year but for a shorter period, its water consumption could well be even less. It also cannot be assumed a caravan use, if it did re-start, would continue on into the future. In contrast, water consumption of this permanent development before me would be expected to occur consistently over the months and years ahead. Finally, although the appellants gave a level of daily water consumption for the caravan use against which the development was compared, they quite fairly accepted that level was '*an educated guess*' and it was unsupported by specific data or an actual known consumption rate. Therefore, for these reasons I cannot assume that, for the purposes of assessing water neutrality, the caravan use and its associated information provides the existing level of water consumption for the site against which the housing scheme can be compared.
28. Turning to the appellants' water strategy for the proposal, the dwellings will have water saving devices and rainwater harvesting integrated into their design. Putting aside my findings about the evidence concerning the existing water consumption on the site, within their strategy they have placed weight on public utilities addressing water leakage in the wider water system. That could not be secured under this decision, and, whether or not it was done, it would have a comparable effect on the caravan site if that use did, in fact resume. It therefore cannot be weighed as a benefit of this development when compared to the caravan use. Drawing water from a borehole is also proposed, but I have no confidence that would not exacerbate the concerns of ground water supply that are at the heart of seeking water neutrality. It is

suggested as well to retro-fit Richmond House and so reduce water consumption at that property, but there is no firm detail as to how effective that would be or how it would be delivered. As such, the weight I can afford these matters is limited.

29. Therefore, given the above, it has not been shown that the development would result in a state of water neutrality.
30. In coming to this view, while the appellants have contended there is little guidance as to how water neutrality is achieved, that does not offer me a basis to accept a scheme without the required degree of certainty about its impact. Attention was also drawn to a Council comment that the issue of water neutrality would not affect small scale householder applications. To my mind that applies more to domestic extensions rather than to proposals of this scale.
31. Accordingly, mindful of the required degree of certainty, I conclude that, when taken by itself or in combination with other plans or projects, the development would have a likely significant effect on the designated sites of the Arun Valley SAC and SPA for which no adequate mitigation is offered. It would therefore be in conflict with Policy 31 in the HDPF, which seeks to safeguard such sites, and guidance in the Framework.

Other Matters

32. It was agreed that the Council has a shortfall in its supply of deliverable housing land, and I have no reason to consider otherwise. However, the so-called 'tilted balance' in paragraph 11(d) of the Framework that is often engaged in such circumstances does not apply if the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. These policies include, among other things, those relating to habitat sites. Given my findings in relation to the final main issue, I consider the 'tilted balance' is not engaged in this case.
33. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan unless material considerations indicate otherwise. In this instance a conflict with the development plan has been identified in relation to 2 main issues.
34. I accept the benefits of providing 2 extra houses in an area with a housing land supply shortfall. I recognise too that the development is to be built to a high standard environmentally in accordance with the current thrust of Government guidance. There would also be economic benefits from the construction and occupation of the proposal, with the residents providing additional support for local services. However, even if taken together, I consider these matters do not outweigh the harm arising from the development plan conflict identified. Having regard to the remainder of the appellants' case, I therefore find there are no material considerations to indicate that the development should be determined other than in accordance with the development plan.

Conclusion

35. For the reasons given I conclude the appeal should be dismissed.

JP Sargent

INSPECTOR