



Appeal Decision

Site visit made on 19 October 2022

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2022

Appeal Ref: APP/L3815/W/22/3290395

Land west of The Shire, Westbourne PO10 8FT

- 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 planning permission
 - The appeal is made by Mr A Southcott against Chichester District Council.
 - The application Ref WE/21/02159/FUL, is dated 9 July 2021.
 - The development proposed is described as the erection of 7 no. dwellings, access, landscaping and associated works.
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Decision

1. The appeal is dismissed and planning permission for the erection of 7 no. dwellings, access, landscaping and associated works is refused.

Background and Main Issues

2. The Council have confirmed within its statement of case that had it determined the application, it would have been refused on grounds relating to the location of the appeal site beyond an identified settlement boundary, an absence of information relating to the effect of the proposal on the Bechstein Bat, a protected species, and the Solent Maritime Special Area of Conservation (SAC).
3. The appellant submitted a signed planning obligation made under section 106 of the Town and Country Planning Act 1990. It requires a sum of money to be paid to the Council to mitigate for the recreational disturbance of the proposed dwellings on the Chichester and Langston Harbour Special Protected Area (SPA). The Council state, that on this matter only, they would no longer object and that the proposal would no longer conflict with Chichester Local Plan 2014-2029 (the Local Plan) Policy 50. With nothing before me to the contrary, and on review of the planning obligation, I agree with the Council's position.
4. The main issues are, therefore, a) whether the proposed development is appropriate to a countryside location; and the effect of the proposed development on b) the character and appearance of the area; c) protected species; and d) the Solent Maritime Special Area of Conservation (SAC).

Reasons

Countryside location

5. The appeal site is a paddock bordered by Long Acre Lane, School Lane and The Shire, a relatively new housing development. It is positioned beyond the settlement boundary of Westbourne, a designated service village. The Shire, would form the access to the appeal site and some of the properties look out

- over it, giving the impression it is part of the design of that development, although it is in separate ownership.
6. The Shire development is also outside of the settlement boundary but formed part of the Westbourne Neighbourhood Plan 2017-2029 (NP) allocations, and as it has now been completed can be considered as part of the settlement. Therefore, I am satisfied the appeal site could be considered immediately adjacent to an existing settlement boundary. With that in mind, to accord with Local Plan Policy 45 it is necessary to consider whether the proposal would meet an essential, small scale and local need.
 7. There is little justification for the proposed houses need. The appellant states there is a requirement for smaller dwellings by younger first time buyers and older households looking to downsize, but there is nothing before me supporting this assertion.
 8. Policies 2 and 5 of the Local Plan allow for small scale residential developments within service villages and sets out the housing requirement for Westbourne as 25 dwellings over the Local Plan period. This has been allocated within the NP and would provide 28 units across 3 sites. NP Policy SS2 specifically dealt with The Shire development. It included the appeal site as part of the allocated area and set a maximum of 16 dwellings. This has been achieved by that already built. As such the Local Plan housing allocation has been met for Westbourne and there is no essential, small scale and local need for the proposed 7 additional open market houses.
 9. In light of the Council's fluctuating housing land supply, which I return to in the planning balance below, it implemented an Interim Housing Policy Statement (IHPS) in November 2020. This sets out 13 specific criteria to aid assessment of new housing developments when the development plan could be considered out of date. For these reasons compliance with the IHPS is a material consideration.
 10. The main parties have assessed the proposal against the IHPS and there are 5 criteria in contention (Nos 1, 3, 8, 9 and 12). In relation to No 1, I have found the appeal site contiguous with a settlement boundary. No 8 deals with environmental quality and standards of construction, and although the Sustainable Statement referred to by the appellant is not before me, it is likely these matters could be dealt with by condition. However, for the reasons set out in my second and third main issue below, the proposal would not comply with Nos 3, 9 and 12 which deal with character and appearance matters and the SAC. As such I find that the proposed scheme would not accord with 3 of the 13 IHPS criteria.
 11. I therefore find the proposal would not be appropriate to a countryside location. It would conflict with the development plan, specifically Local Plan Policies 1, 2, 5 and 45, NP Policies OA1 and SS2, and paragraph 78 and 79 of the Framework insofar as they seek to ensure the location of housing developments are appropriate and reflect local needs.

Character and appearance

12. The appeal site is accessible from gated entrances, 1 on The Shire and 1 at the junction of Long Acre Lane and School Lane. The part of School Lane which passes the site is a well-used public footpath, enclosed by hedging and trees

with overgrown verges. It links the developed first part of School Lane with Long Acre Lane and the countryside beyond. Long Acre Lane is a narrow road with high dense hedging on both sides. Between it and the appeal site there is a designated footpath which is separated from the appeal site by a post and rail fence and reasonably recently planted secondary hedge. The appeal site is separated from The Shire by similar boundary treatments to that along the Long Acre Lane footpath.

13. I observed on my site visit that most of the houses within The Shire face outwards towards the footpath adjacent to Long Acre Lane or toward North Street. This creates a level of integration between it and the surrounding village. In effect with so many of the new properties facing out it reduces the inward-looking nature often associated with new residential developments at the edge of villages.
14. The scheme before me, however, is entirely insular, it fails to continue the outward facing orientation, proposing only rear garden boundaries abutting School Lane of the Long Acre Lane footpath. This would create an internalised layout dominated by the access road. A small amount of the paddock would be retained but due to the central location of the road this would be pushed to one side and would, largely be separated from the dwellings by garden boundaries, the road itself, the turning space and additional parking bays. This would not only create an awkward layout for the appeal site but reduce the outward-looking nature of the existing dwellings on The Shire, creating a somewhat generic, albeit relatively small, suburban styled housing estate at the rural edge of the village.
15. I have reviewed my colleague's comments relating to the approved appeal APP/L3815/W/15/3003656, which allowed The Shire development, and their references to the previously dismissed appeal APP/L3815/A/13/2198341, which related to a larger housing scheme for both the appeal site and the area of land now occupied by The Shire. Their assessment of the area and impact of development still hold merit, and the character and appearance of this edge of Westbourne, has not significantly changed since those decisions were issued.
16. The proposal would clearly extend beyond the traditionally linear form of Westbourne which The Shire, and more established properties on School Lane, and Long Copse Lane retain. Although the fields beyond the site would retain the physical gap between Westbourne and Emsworth, visually the proposal would look like it was expanding out of the village. It would replace the softness of transition between country and village were properties are set back from the roads and development incrementally intensified as you transition towards the village core, with development right up to the boundary edges incorporating minimal visual buffering. This would not only detrimentally alter the appearance of this part of Westbourne but also harm its rural character.
17. In effect the proposal is seeking an equivalent scheme to the additionally proposed housing, which was specifically found unacceptable in appeal 2198341, and were removed, along with other necessary alterations, in appeal 3003656, leaving the paddock undeveloped. The scheme before me has not moved the design of the proposal on so far as to reduce the significant harm building right up to School Lane and Long Copse Lane would have on the rural and open character of this approach into Westbourne.

18. The lack of designation of the appeal site as green space or public space is noted. However, this does not alter the negative affect the proposed development would have on the wider character and appearance of the area.
19. Consequently, I find the proposal would significantly harm the character and appearance of the area. It would be contrary to Local Plan Policies 33 and 48, NP Policy LD1 and paragraph 130 of the Framework insofar as they seek a high standard of design which integrates with its surroundings both built and natural.

Protected species

20. The Council assert, via radio-tracked evidence, the site and its surroundings form part of the flight lines of the Bechstein Bat, specifically the southern boundary along Long Copse Lane. This is a species of principal importance as designated under section 41 of the Natural Environment and Rural Communities Act 2006.
21. The appellant's Ecological Impact Assessment dated 13 January 2022, makes reference to the Bechstein Bat, insofar as results from a desktop study have confirmed. It also notes the appeal site would likely be used for foraging and commuting by bats. Nonetheless the mitigation proposed is general and focused on the western boundary with School Lane. It recommends a 5m buffer from that boundary, without detail, and limitations to external lighting. However, from the plans before me it would appear the rear gardens of 3 proposed dwellings would immediately abut this boundary with only 'protective fencing' separating them from School Lane. The nature of the fencing is not evident, nor the effect the pressure from domestic garden use would have on the proposed buffer zone or the bats. It also makes no comment as to how the southern boundary would be protected to support the Bechstein Bats commuting route.
22. From the information before me I am satisfied there is a reasonable likelihood that the proposal would affect bats, specifically the Bechstein Bat. However, I am not convinced that the suggested mitigation measures are appropriate or detailed enough. I find therefore, that the proposal could have a harmful effect on a protected species. This would be contrary to Local Plan Policy 49, NP Policy BD2 and paragraph 180 of the Framework, insofar as they seek mitigation against harm to protected species.

SAC

23. The appeal site falls within the catchment area of the SAC, an area which, as designated by Natural England, needs action to be taken concerning nutrient neutrality. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires an appropriate assessment (AA) to ensure that the development would not adversely affect the integrity of the SAC. However, clause 63(1) of that regulation states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. An AA is not, therefore, necessary where there is no intention to grant permission. As I am dismissing the appeal on matters relating to location, character and appearance and protected species, I am not required to pursue this matter further so have not sought comment from Natural England.

24. Nevertheless, had I needed to continue the AA, and the appellant's proposal regarding East Field had been considered suitable mitigation by Natural England, there is no mechanism or obligation before me which would allow it use to be secured and such matters could not be conditioned. As a result, I would be unable to ensure the proposal would not have a detrimental effect on the SAC. The proposal, therefore, would conflict with Local Plan Policy 49 and paragraphs 180 and 182 of the Framework, insofar as they seek to protect important habitats and biodiversity.

Other Matters

25. The Council have adopted an Interim Housing Policy Statement to assist with decision making in relation to residential development when the Council is in housing supply deficit. It sets out 13 criteria and the main parties have submitted their own assessments of the proposal against these. The matters of dispute are criterium 1, 3, 8, 9 and 12. These matters are dealt with in the main issues above except criteria 8, which relates to construction and environmental quality of new development, details of which could be sought by condition.
26. The appellant asserts the proposal is acceptable in relation to housing density, mix, residential amenity, flood risk, and drainage is noted. Nevertheless, these are matters all development should consider, so constitute a lack of harm which, by definition, cannot weigh for or against the proposal.
27. The appeal site is also located within the Chichester Harbour Area of Outstanding Natural Beauty (AONB). AONBs are designated for the purposes of conserving and enhancing natural beauty and Section 85(1) of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to these purposes in this decision. The Council did not object to the appeal scheme in this regard and I am inclined to agree that due to the scale of the proposed development, in relation to the size of the AONB, and its comparative proximity to Westbourne, the special qualities of the AONB would not be adversely affected.
28. The main parties have signed a Statement of Common Ground which confirms discussions relating to obligations have occurred. However, notwithstanding the section 106 agreement relating to mitigation of impact on the SPA, there is nothing before me to secure such matters, so I am unable to take these discussions into account.

Planning Balance

29. When the Council wrote its Statement of Case, it was able to demonstrate a 5 year housing land supply. However, it has since confirmed, as of August 2022, it can only demonstrate a 4.8 year supply. As such paragraph 11(d) of the Framework is engaged.
30. Notwithstanding the appeal site's location within an AONB and the zones of influence for a SPA and SAC. The proposal conflicts with Local Plan Policies 2 and 5, for the reasons set out in the first main issue, which are important policies in terms of spatial strategy. However, and in the above context, they would be deemed out of date. I would accordingly reduce the weight I would attach to any conflict with them.

31. The proposal would, however, provide 7 dwellings, quickly due to its small scale and lack of landownership or infrastructure impediments, in a relatively sustainable and accessible location. This along with the associated economic and social effects of new residential development would constitute benefits of the scheme. Due to the obvious but marginal fluctuation in the Council's housing supply above and below the 5 year requirement, I only find these matters to attract modest weight.
32. I cannot, however, afford any weight to the appellants assertion that the properties would meet an ongoing need for smaller housing in Westbourne as there is no evidence before me to support this. The mitigation of impact on the SPA, secured by obligation would, by definition, mitigate harm rather than provide benefit and so is weighted neutrally.
33. The harm I have found would be wide ranging and long lasting, relating to the location, character and appearance of the area and protected species. They would result in conflict with the Framework as I have set out above and I attach substantial weight to them.
34. The adverse impacts of granting a planning permission would, therefore, significantly, and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The appeal scheme would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

35. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, that would indicate a decision otherwise. The appeal is, therefore, dismissed and planning permission refused.

RJ Redford

INSPECTOR