



Appeal Decision

Hearing Held on 22 November 2022

Site visit made on 22 November 2022

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/L3815/W/22/3291594

Land and Buildings on the south side of Church Lane, Birdham PO20 7AT

- 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 Mr S Langmead (SBEPI Ltd), against the decision of Chichester District Council.
 - The application Ref BI/20/03034/OUT, dated 20 November 2020, was refused by notice dated 4 August 2021.
 - The development proposed is the erection of 25 no. dwellings comprising 17 open market and 8 affordable units with access, landscaping open space and associated works.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The proposal has been made in outline, with access and layout forming part of the application. All other matters are reserved for future consideration.
3. Prior to the Hearing two Statements of Common Ground (STOG) were received. One specifically for 5 year housing land supply (HLS) and the other for all of the other agreed matters. The parties agreed at the Hearing, that there was a shortfall of 4.82 years HLS. However, since the Hearing the Council has published its most recent housing land supply assessment. This slightly amends the Council's position down to 4.74 years. Accordingly, I have taken this more up to date assessment, together with the other agreed matters into consideration.
4. At the outset of the Hearing the appellant produced a legal agreement that had previously been agreed with the Council. Although further signature was required from the County Council, after a small extension of time, the finalised agreement dated 28 November was received. The Council confirmed their intention to withdraw their second reason for refusal, subject to completion. I have therefore considered the appeal on this basis.

Main Issues

5. In view of the above, I consider the main issues to be:

- Whether the development represents major development in the Chichester Harbour Area of Outstanding Natural Beauty (the CHAONB); and
- The effect of the development on the character and appearance of the area, with reference to the CHAONB.

Reasons

Major development

6. National Planning Policy Framework (the Framework) makes it clear that when considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection, great weight should be given to conserving and enhancing landscape and scenic beauty.
7. Permission should be refused for major development, other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.
8. Details of the CHAONB are set out in the Chichester Harbour Management Plan 2019-2024. This confirms the purpose of the designation is to conserve and enhance the natural beauty of this nationally important protected landscape, which encompasses both water and the surrounding land.
9. There is no definition of major development in the Framework. For the purposes of paragraphs 176 and 177, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.
10. When considering applications in areas of outstanding natural beauty, it is necessary to assess the proposed development in terms of the particular context of the appeal site.
11. The site is located on the south-eastern edge of the CHAONB on the Manhood Peninsula, outside the historic core of Birdham Village. From the evidence the CHAONB is the second smallest designated AONB, being heavily constrained by 42% water coverage.
12. The appeal site is some 2.12 hectares of rough grassland. With a further similar grass field and the cricket ground to the west. Church Lane retains a semi-rural character, with the currently undeveloped nature of the site, making a positive contribution to the landscape. It provides important relief, from the development that largely surrounds the site and some transition to the more open countryside beyond.
13. Whilst I accept that the current proposal occupies a smaller area of land than that proposed by the previous dismissed appeal (APP/L3815/A/13/2208162). Nonetheless, it would still occupy a substantial area of land when compared to the existing settlement pattern in the area.
14. The proposal would result in 25 dwellings, together with parking, internal roads, formal gardens and the domestic paraphernalia usually associated with residential development, into an area of land, previously free from development. To my mind, this quantum of development would fail to conserve

or enhance the landscape and would result in significant harm to the natural beauty of this significantly constrained part of the CHAONB.

15. For the above reasons and for the purposes of the Framework, I find that it is reasonable to conclude that the scale and setting of the proposed development represents major development in the context of this site and its location in the CHAONB.
16. In coming to this finding, it is necessary to go on to consider whether there are exceptional circumstances, including the need for the development; its effect on the local economy; any detrimental effect on the environment, the landscape and recreational opportunities; and the cost and scope for providing housing outside the designated area. I shall deal with these in the planning balance.

Character and appearance

17. The prevailing pattern of existing development is semi-rural, with the historic core centred around the Church. In general, the settlement pattern has evolved over time, with housing loosely interspersed with areas of open space, giving a semi-rural, tranquil and relatively undeveloped character to the surrounding area. The appeal site adds positively to this open character.
18. The proposed development has been located to the south and east of the site with the main access road to the north-west. The dwellings are generally clustered around a central village green, with further open space and a wildlife corridor towards the boundary with Coppice Farm.
19. In contrast with the existing position, the significant number of dwellings and associated infrastructure of the appeal proposal, would significantly change the character of the appeal site from rural to suburban. The layout results in a development that would appear overdeveloped, contrived and artificial in this semi-rural setting.
20. The site has two field accesses off Church Lane and there are existing trees and very overgrown hedging bounding the site from the lane. This currently provides screening from Church Lane and to the church and cricket ground beyond. Be that as it may, the proposed development would still be highly visible from the rear of the numerous dwellings that partially surround and back onto the site.
21. Construction of the access would result in the removal of part of the hedge in Church Lane. I acknowledge that the resultant additional views into the site would be primarily of the proposed village green and wildlife corridor. However, there would be additional oblique views of the new dwellings from those passing the site in Church Lane.
22. Whilst part of the hedge screening could be controlled by a condition for a period of time, I have no evidence that it all falls within the appellants ownership. Moreover, any such protection would be temporary and the screening it provides is likely to change month to month and year to year. Given its current overgrown nature it is reasonable to conclude that it will be subject to some remedial work, should the development be allowed.
23. Overall, I find that the number of dwellings, with the associated infrastructure and layout, introduced into a field where there is currently none, encroaches

into of this part of the CHAONB, causing significant and unacceptable harm to the semi-rural character of the area and CHAONB.

24. For the above reasons, the proposed scale, layout and design of the development would appear contrived and incongruous when viewed in the context of this important semi-rural location. I find therefore that the scheme would cause significant harm to the character and appearance of the area and this important part of the CHAONB. The proposed development would therefore be in conflict with Policies 2, 33, 43, 45, 47 and 48 of the Chichester Local Plan: Policies 12, 13 and 15 of the 'made' Birdham Neighbourhood Plan (2016). Criteria 4 and 5 of the Council's Interim Position Statement for Housing Development (2020). In summary, these policies when taken together set out the Councils settlement Strategy and ensuring that new development respects and where possible enhances the character of the surrounding area

Appropriate assessment

25. The Habitat Regulations 2017 require an assessment to be undertaken, as to whether a proposal would be likely to have a significant effect on the interest features of a protected site. The Chichester and Langstone Harbours is such a protected site, as a result of its importance to over-wintering and nesting birds.
26. The proposal would provide a net increase of 25 dwellings. Furthermore, where new residential development is proposed, the additional nutrient load from the increase in wastewater and/or the change in the land use of the development land created by a new residential development can create an impact pathway for potential adverse effects on Habitats sites, that are already suffering from problems related to nutrient loading.
27. The parties agreed that in the event that the appeal is allowed, these matters could be dealt with by way of legal agreements. However, as I have already identified significant harm to the character and appearance of the area and CHAONB such that the appeal should be dismissed, there is no need to consider this further.

Planning balance and other considerations

28. I have already found that the proposed development represents major development in the CHAONB and causes significant harm to the character and appearance of the area and CHAONB.
29. Paragraph 11 of the Framework provides a presumption in favour of sustainable development and planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Council have indicated in their evidence that they are unable to demonstrate a five-year supply of deliverable housing sites. The amended level of supply is 4.74 years. However, as I have found the development to be major development in the CHAONB, the tilted balance is not engaged in this instance.
30. I acknowledge that a number of benefits would flow from this development, including the contribution that the 25 dwellings, including the affordable housing units would make. In combination these would provide a limited benefit to the Council's overall housing supply. The construction phase of the development would be likely to benefit the local economy, as would future residents using local facilities and services. However, these benefits are

significantly and demonstrably outweighed by the significant harm I have already identified.

31. It is the Council's case, that this scale of housing development could be provided in less sensitive locations in the district. They have directed my attention to a number of planning applications that lie outside the CHAONB, that are currently under pre-application discussion. I accept that the outcome of these discussions and any future applications is uncertain. Nonetheless, from the evidence including the Interim Position Statement for Housing Development, it is apparent that the Council are seeking to address the current shortfall, by providing housing in less sensitive locations. Moreover, there is nothing before me to suggest that development in the CHAONB, will be necessary to meet the current modest housing shortfall.
32. My attention has been drawn to several other recent appeal decisions including Chas Wood Nurseries (APP/L3815/W/22/3299268) and Land south Clappers Lane (APP/L3815/W/22/3291160). However, to my mind these differ from the proposal before me, as they are not sited within the AONB and therefore the local context is different. In any event, I have to determine this appeal on its own planning merits, and their presence would not justify granting this appeal.
33. Overall, I have found that the proposed development represents major development in the CHAONB. I have no compelling evidence before me to conclude that the exceptional circumstances required to allow the appeal to exist. The limited benefits that would flow from allowing the development, do not outweigh the significant harm to the character and appearance of the area and CHAONB that I have identified.

Conclusion

34. For the above reasons the appeal is dismissed.

Hilary Orr

INSPECTOR

Appearances

For the appellant:

Mr Paul White (BA Hons Dip TP MRTPI) Director of Planning Smith Simmons & Partners

Ms Alison Galbraith (MA Hons) member of the Landscape Institute Director of the terra firma Consultancy Ltd.

Mr Gregory Beale MSc, BA(Hons), Dip TP IHBC, MRTPI. Director at Planning Heritage Limited

Mr Ben Smith Architect RIBA Partner Smith Simmons & Partners

For the Local Planning Authority:

Ms Jo Bell BA (Hons), MSc, MA, MRTPI Development Manager (Majors and Business)

Miss Jane Thatcher BA (Hons), PGCE, MSc, MRTPI Senior Planning Officer (Majors and Business)

Dr Richard Austin BA (Hons), MA, PhD (in protected landscape management)
AONB Manager (Chichester Harbour Conservancy)

Mr Steve Lawrence BSc (Hons), Dip TP, DIP UD, MRTPI

Principal Planning Officer (Chichester Harbour Conservancy)

Ms Christine Marsh BA (Hons), DipLA and Chartered Member of the Landscape Institute since 1990. Associate Landscape Architect at Hankinson Duckett Associates (HDA)

Interested persons:

Timothy Firmston Birdham Parish Council

David Barratt Birdham Village Residents Association

Pieter Montyn County Councillor

Laurence Pocock

Kenneth Wright

Sanhya Thompson

Craig Howard