



Appeal Decision

Hearing Held on 18 October 2022

Site visit made on 18 October 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/L3815/W/22/3301748

**Land South of Foxbury Lane, Foxbury Lane, Westbourne, West Sussex
Grid Reference Easting: 477466 Grid Reference Northing: 108357**

- 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 and Mrs Gilraine against the decision of Chichester District Council.
 - The application Ref WE/20/01569/FUL, dated 23 June 2020, was refused by notice dated 28 January 2022.
 - The development proposed is "Erection of 1 no. dwelling and associated landscaping".
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council and the appellants have signed a Legal Agreement under Section 106 of the Town and Country Planning Act 1990, which is dated 26 September 2022. I shall return to this Legal Agreement later in this decision.

Main Issues

3. The main issues are:
 - The effect of the proposal on the integrity of Special Protection Areas; and
 - The effect of the proposal on the rural character and appearance of the area.

Reasons

Special Protection Areas

4. The appeal site lies within the zone of influence of the Chichester and Langstone Harbour Special Protection Area (SPA) and Ramsar site, as well as the Solent Maritime Special Area of Conservation (SAC). These areas are designated as internationally important wildlife sites as they support significant numbers of overwintering bird populations.
5. There is no dispute between the main parties that the appeal scheme could have a likely significant effect on the integrity of these sensitive areas (either individually or in combination with other plans or projects) notably by reason of additional recreational pressures, unless suitable mitigation is provided. Natural England also considers that the proposed development could damage or

destroy the interest features for which Chichester Harbour Site of Special Scientific Interest (SSSI) has been notified.

6. Furthermore, concerns have been raised by Natural England in respect of the high levels of nitrates from agricultural sources and wastewater from housing and other types of development, which are entering the water environment of protected sites. These nutrients are causing eutrophication in this sensitive environment, to the detriment of its water quality. An increasing number of waterbodies, which are in or linked with European Sites, are now, as a result, deemed to be in an 'unfavourable' conservation status for the purposes of the Habitats Regulations.
7. As the appeal proposal would be situated within the Chichester Harbour catchment area, the treated effluent from the development would eventually discharge into a European or internationally designated protected site. Consequently, Natural England's position is that the cumulative increase in nitrate levels from development could have a likely significant effect on the integrity of European Sites, unless mitigation measures have been secured.
8. In such circumstances, I am required, when evaluating the effects that a proposal might have on a European site, to consider avoidance and reduction measures through an Appropriate Assessment (AA), rather than at the screening stage.

Recreational Disturbance

9. Residential development proposals within the 'zone of influence' of the sensitive sites are required to make a financial contribution towards the Solent Recreation Mitigation Strategy (otherwise known as the "Bird Aware Solent" Scheme), which sets out a number of mitigation measures designed to prevent bird disturbance from recreational activities.
10. The Section 106 Legal Agreement which has been submitted as part of the appeal process would secure the payment of the required recreation disturbance mitigation contribution prior to commencement of the development. In their consultation response, Natural England confirmed that the financial contribution to mitigate recreational disturbance is sufficient to avoid an adverse impact to the integrity of the Chichester and Langstone Harbour SPA and their relevant features.
11. Having had regard to the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), as well as national policy and guidance on the use of planning obligations, I am satisfied that the obligation is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

Nitrate neutrality

12. In March 2022, Natural England published a letter providing advice for development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitats sites cannot be ruled out. The advice from Natural England is that new residential development must therefore achieve 'nutrient neutrality'. It sets out how a proposal can achieve nutrient neutrality and thereby address any uncertainty surrounding the impact of new development on protected sites.

13. The appellants' assessment is based on the use of an on-site package treatment plant, and includes revised nitrate calculations for the proposed development, following the Natural England's updated methodology. The transition from low quality grazing to meadows and woodland would generate a lower nitrate load. This is confirmed by the full calculations for the site, which show that the proposal would achieve nitrate neutrality, subject to woodland planting being secured as part of a wider landscaping scheme.
14. As the proposed mitigation would be implemented directly on the appeal site, the main parties take the view that this matter could be addressed by way of a condition requiring details of a Nitrate Neutrality Scheme to be agreed by the Local Planning Authority prior to commencement of the development. Natural England, who were consulted as part of the AA, were provided with details of the appellants' revised calculations. In their consultation response, Natural England confirmed that the proposed measures, including woodland planting to achieve nitrate neutrality, are sufficient to avoid an adverse impact to the integrity of the Chichester and Langstone Harbour SPA and their relevant features.
15. However, and whilst the comments made by Natural England regarding the suggested condition are noted, I need to be satisfied, as the competent authority, that any mitigation scheme is certain at the time of the Appropriate Assessment. As stressed in Natural England's Advice letter, the mitigation measures must be effective for the duration of the impacts which, for housing, is typically taken as in perpetuity, with the costs of maintaining, monitoring and enforcing mitigation calculated for a minimum of 80-125 years. Moreover, the national Planning Practice Guidance¹ indicates that any measures used to inform the decision regarding the effect on integrity needs to be sufficiently secured and likely to work in practice.
16. With all of this in mind, I am concerned that the wording of the suggested condition does not guarantee that the mitigation measures will be implemented and achieved for the lifetime of the development, and that the integrity of the protected sites would not as a result be compromised. In particular, the condition does not provide the reassurance that if, for example, the appellants were to sell the whole or part of the land, the requirements of the condition would automatically be legally binding for the new owner(s). So, even if I were to accept that the condition would ensure the implementation of the mitigation measures before any harm to the protected sites would occur, it would not be possible to address the ongoing effectiveness of the proposed mitigation for the lifetime of the development.
17. The planning obligation submitted as part of the appeal would secure adequate mitigation to address the impacts resulting from increased recreational disturbance. However, for the reasons detailed above, I cannot be certain, beyond all reasonable scientific doubt, that any likely adverse effect on the integrity of the sensitive sites resulting from the proposal would be appropriately mitigated, to ensure that it would achieve nutrient neutrality for the lifetime of the development. Consequently, the appeal scheme would not accord with the requirements of LP Policy 50, which seeks to ensure that avoidance/mitigation measures are provided as part of residential development

¹ Paragraph: 004 Reference ID: 65-004-20190722.

proposals, as well as paragraphs 180-182 of the Framework, and the Habitats Regulations.

Character and appearance

18. The appeal site comprises a large parcel of land of an irregular shape, which is bounded by Foxbury Lane to the north, agricultural land to the east and woodland to the west and south. It lies within an area of open countryside scattered with small villages and hamlets, but also isolated farmsteads and manorial complexes. The site lies within the setting of the South Downs National Park, and forms part of a transitional landscape, which shares some key characteristic from both the South Coast Plain and the South Downs Character Areas.
19. The appeal site is located outside of any defined settlement boundary and therefore falls, for planning policy purposes, within the Rest of the Plan Area. As set out in Policy 2 of the Chichester Local Plan² (LP), development in the Rest of the Plan Area is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with LP Policies 45 and 46.
20. There is no dispute between the main parties that the construction of the proposed dwelling on the site would result in the development of an isolated home in the countryside which, as stressed by paragraph 80 of the National Planning Policy Framework (the Framework), should be avoided, except in a limited number of circumstances. These include situations where the design of the proposed house is of exceptional quality (paragraph 80e) of the Framework), having regard to the following criteria:

Whether the design is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas:
21. The proposal has been subject to a rigorous design process, which has been described in detail within the appellants' submissions and at the hearing. The appeal scheme clearly demonstrates a thorough understanding of the site's characteristics and its surroundings, resulting in a bespoke dwelling which is considered of outstanding quality.
22. The scheme's architectural approach is inspired by flint, which has traditionally been used locally as a building and walling material, but would here be used in a contemporary manner. The proposed design celebrates the versatility of this material, with various types of flint wall within the building and garden providing a clear connection to its locality. For example, the exposed elevations are proposed to be finished with dark snapped flint, whilst cobbled flint and field flint walls would be used within the courtyard and elevations facing out the private formal garden. The theme is carried throughout the project, notably by using a palette of materials reflecting the varied tones and textures which characterise flint.
23. Furthermore, the design of the proposal picks on the layout of traditional inward facing farmsteads, which typically follow a loose courtyard plan arrangement. This, together with the proposed walled garden, would bring a

² Chichester Local Plan: Key Policies (2014-2029).

sense of enclosure which would also assist in providing a clear distinction between the property's domestic curtilage and surrounding area.

24. Whilst the proposal would not be widely visible in public views and would be occupied as a private dwelling, there would be glimpses of the new building through the vegetation, which may attract individuals interested in contemporary buildings to the area. Learning outcomes could also be shared help to raise the standards of design within the wider area, and foster good practices for energy efficient developments. In that respect, it was agreed by the main parties that a condition could be imposed to ensure that such learnings can inform further sustainable designs more widely.

Whether it would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area:

25. Although the site's condition largely reflects the rural character of its surroundings, man-made interventions have overtime eroded a number of historic landscape features. The site historically comprised three distinct fields, the boundaries of which were clearly defined by hedgerows. However, the internal field boundary hedgerows, as well as perimeter hedgerows and trees, are no longer there. Horse paddocks now dominate the northern part of the site, which displays a number of detracting features, such as electric fencing, stable buildings and other paraphernalia associated with the equestrian use. The southern part of the site comprises pasture land, which is enclosed by mature hedgerows and rises towards a woodland backdrop.
26. The Council's concerns relate primarily to the scale and siting of the proposed dwelling. However, and whilst there is no doubt that it would be significant in size, the building would sit within spacious and verdant grounds, which would ensure that it does not stand out as an incongruous feature in the landscape. The siting of the proposal has been carefully selected, as it would be nestled into the site, within the clearing of the mature woodland, which would soften the visual impact of the new dwelling.
27. In addition to the proposed built form, the appeal scheme would reinforce the local landscape distinctiveness, as the paddocks would be replaced with a diverse pattern of species-rich grazing pasture, deciduous woodlands, flower-rich grassland and wetland habitats. As part of the development, thick boundary would be planted to reinstate historic field boundaries, together with hedgerow trees, and a historic tree line would be restored to the site's eastern boundary, which would also assist to soften the views from the adjacent public footpath. Woodland shaws would enhance the ecological connectivity of the fragmented woodlands, thus supporting their natural regeneration. The removal of the structures and paraphernalia associated with the equestrian use of the site, but also the overhead power line, which would be replaced with an underground service, would represent improvements in landscape terms.
28. I note the Council's concerns regarding the effect that the vehicular access for the new dwelling would have upon the rural character of the locality. However, the appeal scheme seeks to use an existing track and access onto Woodmancote Lane and proposes to replace the existing metal gates, posts and wire fencing with a new agricultural-style timber gate, which would be set further back from the road frontage, and would not look incongruous or overly domestic.

29. The access and the gate would be sited within proximity to the junction with Foxbury Lane and would have an understated character, sitting against the backdrop of the surrounding vegetation. Had the proposal been acceptable in all other respects, I am satisfied that details of the proposed gate and access could have been secured by way of a condition, to protect the rural character of the locality.
30. The Council has referred to a recent appeal decision³ regarding to a development proposal a short distance away from the appeal site. Having regard to the presented evidence, I find that the circumstances of this particular scheme do not represent a direct parallel to the proposal before me, thus limiting the weight which can be ascribed to this decision.
31. Overall, and whilst the appeal scheme would result in the construction of an isolated dwelling in the countryside, I am satisfied that its design is of exceptional quality, in that it is truly outstanding, reflecting the highest standards of architecture, and would help to raise standards of design more generally in rural areas. The appeal development would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area. Furthermore, the appeal scheme would cause no harm to the setting of the South Downs National Park, and its scenic beauty would therefore be conserved and enhanced.
32. The proposal would be contrary to LP Policies 2 and 45, which set out the development and settlement hierarchy for the area administered by the Council and the criteria applicable to proposals in the countryside. These conflicts would however be outweighed by the fact that the proposal is of exceptional quality design, and would therefore meet the requirements and design aims of paragraphs 80e) and 130 of the Framework. Furthermore, I find no conflict with LP Policies 1, 40, 47, 48 and 49 and Policies OA1 and LD1 of the Westbourne Neighbourhood Plan 2017 to 2029. Amongst other things, these seek to ensure that development proposals respect distinctive local character and sensitively contributes to creating places of high architectural and built quality.

Other Matters

33. Various concerns have been raised by interested parties, including reservations regarding the effect of the proposal on highway safety and surface water flooding, which I have noted. However, the Council did not object to the proposal on these grounds, subject to the imposition of conditions to address these particular matters, and there are no reasons for me to take a different view.

Conclusion

34. Whilst I am satisfied that the appeal proposal would be of exceptional quality and meet the requirements of paragraph 80e) of the Framework, this would be outweighed by the conflict with the development and the Habitats Regulations which I have identified above. For this reason, the appeal is dismissed.

S Edwards
INSPECTOR

³ W/4001145.

APPEARANCES

FOR THE APPELLANTS:

Robert Hughes MTCP MRTPI	Director, Hughes Town Planning Institute
Richard Hawkes ARB RIBA	Project Architect, Hawkes Architecture
Michael Young MCLI	Landscape Architect, Squires Young Landscape Architecture
Robert Gilraine	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jeremy Bushell	Principal Planning Officer, Chichester District Council
Owen Broadway	Conservation and Design Officer, Chichester District Council

INTERESTED PERSONS:

Roy Briscoe	District Councillor
Kim Franks	Councillor for Westbourne Parish Council
Martin Yallop	Resident

DOCUMENTS SUBMITTED AT THE HEARING

FROM THE APPELLANTS:

- 1 West Sussex Landscape Character Assessment – Ashlings, Halnaker and Fontwell Upper Coastal Plain (Sheet SC6, SC7, SC8)
- 2 Settlement in the Local Landscape

FROM THE LOCAL PLANNING AUTHORITY:

- 3 Appeal Decision Reference W/4001145 and Drawing Reference 003

FROM INTERESTED PARTIES:

- 4 Text of email sent by Martin Yallop to CDC 22 September 2022 and to Planning Inspectorate 23 September 2022