



Appeal Decision

Site visit made on 18 April 2023

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2023

Appeal Ref: APP/P1425/W/22/3303865

Land adjacent to St Jude's, Brighton Road, Newhaven BN9 9UH

- 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 Richard Hawkins (Haven Bank Ltd) against the decision of Lewes District Council.
 - The application Ref LW/22/0144, dated 25 February 2022, was refused by notice dated 26 April 2022.
 - The development proposed is construction of 8 residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice addresses the appeal site as Land South of Brighton Road. In the banner heading above, I have used the address given on the application form. Based on the application drawings, there is no uncertainty as to the location of the proposed development.
3. Also, in the banner heading above, I have used the company name given on the application form, which differs from the company name provided on the appeal form. I am nevertheless satisfied that the appellant is the appropriate party for submission of the appeal.
4. The planning application was made in outline, with all matters reserved. When considering the appeal, I have treated drawings numbered SP-0293.02 (Location and Site Plan as Proposed), SP-0293.03 (Typical Plans and Elevations Type A) and SP-0293.04 (Typical Plans and Elevations Type B) as being for indicative purposes only. These drawings indicate the proposed access arrangements, site layout, appearance and scale of the dwellings, all of which are reserved matters.
5. Additional biodiversity evidence was submitted with the appeal, comprising the results of a survey for Great Crested Newts¹ and a Bat Roost Assessment². In both cases, this evidence was prepared after the application was determined by the Council, in response to the second reason for refusal. The Council and interested parties have had the opportunity to respond to this additional evidence and I have had regard to it when considering the appeal.

¹ Phlorum Great Crested Newt eDNA Report, July 2022

² Phlorum letter dated 7 July 2022

Main Issues

6. The main issues are:

- whether the proposed development would provide a suitable location for housing in principle, based on the spatial strategy in the Lewes District Local Plan,
- the effect of the proposal on the character and appearance of the countryside, including the setting of the South Downs National Park, and
- whether the proposed development would protect or enhance biodiversity.

Reasons

Suitability of Location

7. The appeal site is a parcel of land south of the A259, roughly halfway between the settlements of Newhaven and Peacehaven. The land was formerly used as a small holding, but is now largely overgrown. There are some remaining small scale sheds and structures, most of which are disused and derelict. There are also as several stored caravans and vehicles, in various states of repair.
8. The site lies outside the planning boundary of Newhaven, for purposes of Policy DM1 of the Part 2 Local Plan³. Outside planning boundaries, Policy DM1 prioritises protection of the distinctive character and quality of the countryside. However, new development may be permitted where it is consistent with a specific development plan policy or where the need for a countryside location can be demonstrated.
9. No specific development plan policy been brought to my attention which would support the provision of dwellings on the appeal site. Furthermore, beyond the general need for housing, to which I return below, no specific need has been evidenced for the proposed housing to be in a countryside location. The proposal would not have any clear role in supporting rural communities, given its proximity to two larger urban settlements. Nor is there any evidence that it would contribute to the provision of affordable rural housing or any other facilities for which there is an identified local need within the rural areas.
10. For the above reasons, I conclude that the proposed development would not provide a suitable location for housing in principle, based on the spatial strategy in the Lewes District Local Plan. It would conflict with Policy DM1 of the Part Two Local Plan, which amongst other things allows for new development outside planning boundaries only where such development is consistent with a specific development plan policy or where the need for a countryside location can be demonstrated.

Character and Appearance

11. While the site has historically been used as a smallholding, and still includes the remains of structures related to that use, those remaining structures are of limited scale and largely in a state of disrepair. Much of the land is overgrown, with a variety of low-level vegetation, scrub, hedgerow species and small trees. The most extensive vegetation is around the periphery, including hedgerows along the front boundary and the adjacent access track. The central part of the

³ Lewes District Local Plan Part 2, adopted 2020

- site is more open and is visible within the surrounding landscape as a parcel of rising open land.
12. There is an existing pattern of sporadic built development between Newhaven and Peacehaven, comprising detached houses and other buildings, mainly on the south side of the A259. Around and between these existing buildings, there is a network of undeveloped land, comprising areas of scrub, small fields and paddocks, with boundary hedgerows. A golf course on the north side of the road provides a more substantial expanse of open land, including both the well-maintained fairways and areas of intervening scrub.
 13. There is a clear distinction in character between the more intensively developed settlement areas of Newhaven and Peacehaven and the intervening, much more sporadically developed land. This intervening area, where the appeal site is located, retains clearly discernible countryside characteristics, albeit those characteristics are somewhat fragile, given the extent of the sporadic built development.
 14. Although there are existing dwellings to the west and south of the site, the extent of their gardens and other associated open land means that the site is not visibly enclosed or surrounded by buildings. Therefore, the site does not comprise a clearly-defined gap in existing built development and the proposal could not reasonably be characterised as infill.
 15. While both scale and layout are reserved matters, the indicative plans suggest that the proposed eight dwellings would be likely to cover a significant proportion of the site. Built development would inevitably extend into the highest parts of the site, conspicuous above the roadside vegetation. The existing network of undeveloped land would be further fragmented, consolidating and intensifying the sporadic built development. The increased proportion of built development would further undermine the area's remaining countryside characteristics, to a material and harmful extent.
 16. The site lies outside, but opposite the boundary of, the South Downs National Park (SDNP). The special qualities of the SDNP include its rolling chalk downland landscape, views of which are available across and beyond the golf course. The existing built development along the A259 forms part of the backdrop to the landscape of the SDNP, lying just outside its boundary. Therefore, the harmful intensification of that built development, as described above, would erode the setting of this nationally designated landscape.
 17. The harm to the setting of the SDNP would be limited, given the somewhat formalised landscape of the adjacent golf course and the extent of existing urban development just outside the SDNP boundary. In their response to the application, the South Downs National Park Authority indicated measures which could mitigate such harm, by retaining and reinforcing existing vegetation and greenspace within the site. However, as noted above, the effectiveness of such measures would be inherently limited, given the extent of proposed built development, extending into elevated parts of the site.
 18. For the reasons given above, I conclude that the proposed development would be harmful to the character and appearance of the countryside and that it would, to a more limited extent, be harmful to the setting of the SDNP. As a

result, it would conflict with Policies CP10 and CP11 of the Part One Local Plan⁴ and with Policy DM1 of the Part Two Local Plan. These policies, amongst other things, require that new development protects the distinctive character and quality of the countryside, and that regard is had to the effect of development on the setting of the SDNP.

Biodiversity

19. The site is within the UNESCO Brighton and Lewes Downs Biosphere Reserve and close to both the SDNP and the Peacehaven Golf Course Local Wildlife Site. There are also a range of other sites designated for their nature conservation importance in the wider area. As noted above, vegetation within the site forms part of a wider network of green space. In their response to the application, the Council's Specialist Adviser (Ecology and Biodiversity) highlighted that a variety of Habitats of Principal Importance are present locally and that there are local records of various protected and notable species.
20. The Preliminary Ecological Appraisal (PEA)⁵ did not identify any potential harm to sites designated for their nature conservation value. However, it did confirm that the site has value at a local level as suitable habitat for several protected species. Although further protected species surveys have been undertaken, as recommended in the PEA, evidence from the Council's ecological advisers casts doubt on the reliability of the survey for Great Crested Newts (GCN).
21. In their response to consultation on the appeal, NatureSpace highlighted that the site is within an amber impact risk zone for GCN and advised that the July 2022 survey is inadequate in a number of respects. In particular, NatureSpace highlighted the lack of on-site survey of a pond which lies 40m west of the site, with suitable inter-connecting terrestrial habitat for GCN. They also highlighted a lack of adequate justification for the finding that GCN are unlikely to use a dried-out pond on site, given that ponds which occasionally dry out in summer may still provide suitable habitat for GCN at other times of year. I noted that this pond did hold water at the time of my site visit.
22. The PEA and Reptile Report⁶ included a range of recommended avoidance, mitigation and enhancement measures, in relation to other potential habitats for protected species on and around the site. Since the development layout and landscaping are reserved matters, there is an opportunity for further design work to take account of these recommendations. Proposed tree protection measures could also be addressed as part of the landscaping details. Therefore, with the notable exception of the outstanding survey requirements for GCN, the evidence indicates that biodiversity on the site could in principle be suitably protected, subject to consideration of further details at reserved matters stage.
23. However, Circular 06/2005⁷ makes clear that it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. In this case, given the limitations of the GCN survey, the application is not adequately supported by evidence that development of eight dwellings could be implemented in a manner which avoids harm or disturbance of this

⁴ Lewes District Local Plan Part 1, adopted May 2016

⁵ Phlorum Preliminary Ecological Appraisal Rev0, dated 27 July 2021

⁶ Phlorum Reptile Survey Report, September 2021

⁷ Office of the Deputy Prime Minister Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, 16 August 2005

species of principal importance⁸. Given the potentially suitable habitat, both within the site and nearby, and the area's status as an amber risk zone for GCN, this outstanding issue cannot safely be addressed through design or mitigation measures, in the absence of further, more reliable survey evidence.

24. Based on the evidence before me, therefore, I am not persuaded that the proposed development would adequately protect or enhance biodiversity. It would conflict with relevant requirements of Policy CP8 of the Part 1 Local Plan and Policy DM24 of the Part 2 Local Plan, and with relevant paragraphs in the National Planning Policy Framework (the Framework). These policies, amongst other things, require that development is not permitted where it would result in harm to habitats or species of principal importance for biodiversity, or undermine green infrastructure networks without incorporating appropriate mitigation measures or making alternative and suitable protection elsewhere.

Other Matters

25. My attention has been drawn to a larger-scale housing development close to the site and similarly close to the boundary of the SDNP. However, this development is within the planning boundary of Newhaven. I also saw during my site visit that it is more clearly enclosed by existing housing of an urban character, which is likewise within the planning boundary. Therefore, this nearby development has little in common with the appeal proposal, in terms of the relevant policy context or its effect on the countryside and the setting of the SDNP. I have therefore given it limited weight.
26. I acknowledge that the appellant received supportive advice from Council representatives, prior to submission of the application and subsequently. However, such support does not overcome the Council's formal decision that the application should be refused, or the evidence which has been provided in response to this appeal to justify and substantiate that decision. There is furthermore no substantive evidence that the Council's decision did not follow the required process, due to working arrangements during Covid or otherwise.

Planning Balance

27. Both main parties agree that the Council cannot demonstrate a five year supply of housing land. The deficit is reported as having arisen as of March 2021 although neither party has quantified the extent of the shortfall.
28. Due to the above shortfall, the development plan policies which are most important for determining the application are deemed to be out of date. However, the relevant development plan policies in relation to protecting the character of the countryside and designated landscapes, and avoiding harm to protected species, are consistent with similar requirements in the Framework. I therefore attribute significant weight to the harm to the character and appearance of the countryside, including the harm to the setting of the SDNP, as well as to the lack of convincing evidence that biodiversity would be adequately safeguarded.
29. With respect to Policy DM1, while this policy limits the delivery of housing, by focussing most development within defined planning boundaries, it does not preclude all forms of development outside those boundaries. Its focus on protecting the distinctive character and quality of the countryside is consistent

⁸ As identified pursuant to s41 of the Natural Environment and Rural Communities Act 2006

with the Framework, notably paragraph 174b. As such, while I acknowledge that the shortfall in housing land supply could provide some degree of justification for the delivery of housing in a countryside location, I have nevertheless, for the reasons outlined above, given the conflict with Policy DM1 moderate weight.

30. The proposed development would contribute eight dwellings towards the shortfall in housing land supply. The occupiers would have access to local services and employment opportunities in the nearby settlements of Newhaven and Peacehaven. Public transport is available in the form of a bus service along the A259, although travel on foot or by bicycle would be somewhat less practical, given the distances involved and the site's location at the top of a hill. Nevertheless, I attribute moderate weight to the contribution to the supply of housing, in a location which is not particularly isolated from local services and facilities.
31. While improved security may be of benefit to both the landowner and occupiers of adjoining properties, the security of the site and items stored on it could also be addressed through a range of other measures which do not involve the introduction of significant built development. Therefore, I have given this potential benefit limited weight.
32. In conclusion, the main benefit associated with the development is its contribution towards the shortfall in housing land supply, to which I have given moderate weight. Set against that are the harm to the character and appearance of the countryside, including the setting of the SDNP, and the potential harm to biodiversity, to which I have given significant weight. I have also given moderate weight to the conflict with the spatial strategy.
33. Given the harm that I have identified, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the proposed development does not benefit from the presumption in favour of sustainable development, as articulated in Framework paragraph 11 d).

Conclusion

34. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material considerations including the provisions of the Framework, I conclude that the appeal should be dismissed.

Jane Smith

INSPECTOR