



Appeal Decision

Site visit made on 7 August 2023

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/Z3825/W/22/3313987

Hele Farm, Sandhills Road, Barns Green, West Sussex RH13 0PU

- 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 Tetlow against the decision of Horsham District Council.
 - The application Ref DC/22/0950, dated 18 May 2022, was refused by notice dated 31 August 2022.
 - The development proposed is erection of detached two storey dwelling and single storey garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Itchingfield Parish have produced the Barns Green and Itchingfield Neighbourhood Plan¹. This includes housing allocations and has been subject to successful examination but it cannot proceed to referendum. This is because of the legal requirements in relation to water neutrality and the Habitat Regulations² given that Natural England (NE)³ have advised that developments within the Sussex North Water Supply Zone (the SNWSZ) must not add to the impact of water abstraction on the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites (the Arun Valley Sites).
3. The Council has produced a Planning Advice Note in relation to the NP which sets out that the Policies within it are consistent with the National Planning Policy Framework (the Framework) and carry significant weight subject to the demonstration of water neutrality. On this basis I consider the NP carries material weight in this appeal

Background and Main Issues

4. The appeal site is within the SNWSZ. Accordingly, although not a Reason for Refusal, I must consider the effect on these protected sites.
5. The main issues are whether the site is an appropriate location for a dwelling taking into account local and national spatial planning policy; and the effect on the integrity of the Arun Valley Sites.

¹ Barns Green and Itchingfield Neighbourhood Plan 2015-2031 Referendum Plan under Neighbourhood Planning (General) Regulations 2012 (including Examiner's recommendations)

² Conservation of Species and Habitats Regulations 2017 (as amended)

³ Natural England's Position Statement for Applications within the Sussex North Water Supply Zone – September 2021 Interim Approach (Position Statement 2021)

Reasons

Spatial Strategy

6. Policy 2 of the Horsham District Planning Framework (the HDPF) focuses development in and around the key settlement of Horsham. Elsewhere growth can take place within defined towns and villages in accordance with the settlement hierarchy set out in Policy 3. Policy 26 seeks to protect the rural character and undeveloped nature of the countryside against inappropriate development. The proposal is not one where a countryside location is essential.
7. In meeting local housing needs both the HDPF and the NP strategies rely to some extent on unallocated windfall sites. It is expected that the majority of these would be within settlement boundaries and development of those that are not should be justified by other material considerations as departures from Policy 4 of the HDPF. The appeal site is not allocated; a four bedroomed house would not appear to meet a particular identified local housing need given the preference indicated in NP Policy 14 for one, two and three bedroomed houses; and the north-western and south-western boundaries of the proposed curtilage are not particularly defensible boundaries. Accordingly in my judgement the proposal does not gain support from the limiting criteria set out at 1, 3, and 5 of Policy 4 of the HDPF.
8. Itchingfield is a rural parish where farming has been the prominent land use since woodland clearance took place across the low weald. The main population centre is Barns Green, a medium village in the settlement hierarchy, which has facilities including a shop, post office, public house, school, village hall and café. Historic settlement is concentrated along the roadsides with the more modern developments in the east of the village.
9. The appeal site is in the countryside for planning policy purposes as it is outside the defined built-up area boundary for Barns Green. The built-up area boundary is a broadly oblong shape with a narrow northward projection along the southern side of Sandhills Road culminating in the broadly triangular curtilage of the dwelling known as The Outpost. The appeal site is therefore separated from the built-up area boundary by Sandhills Road and only a very small part of its curtilage could be said to be close to it. Policy 4 of the HDPF recognises that development may take place outside built-up area boundaries in certain circumstances.
10. The new dwelling site is a mix of part of the tended garden of Hele Farm, woodland, and an area of grassland beyond a hedge which contains a sand school arena with a few jumps and associated paraphernalia. To the west and directly across Sandhills Road are fields and to the south are tennis courts and other playing fields. The proposed dwelling would not be isolated as it is close to Hele Farm and other nearby buildings on both sides of Sandhills Road to the north and south. The site access is well within the 30mph village speed limit and there are wide flat grass verges between it and surfaced footpaths within the village. It is a short walk to bus stops and facilities in the village although for a wider range of facilities future residents would rely on those in settlements elsewhere such as Horsham some 4.5 miles away.

11. As part of the preparation of the NP sites were assessed as to suitability for allocation for development⁴. Land at Hele farm was identified as Site Ref 14 for development for one dwelling, but, in accordance with local and national policies, it was concluded that such developments should be treated as “windfall” rather than being specifically allocated in the NP. The 2017 Assessment found that the site under consideration at that time abuts the built-up area boundary and that one house would not affect the rural nature of the parish provided it was in sympathy with the architecture and character of the village. However, the proposed dwelling would be significantly further back and the curtilage would be much larger and would take up more of the green field behind Hele Farm than the site coloured green in the 2017 Assessment plan.
12. NP Policy 11 relates to windfall sites and allows for proportionate scale residential development on unidentified sites within the built-up area boundary where it relates positively in design terms to the character of the area. It was the recommendation of the Examining Inspector that the wording ‘adjacent to’ was omitted from the preamble to Policy 11 but the Referendum version retains it. There is therefore some conflict here but the wording of the Policy itself takes precedence particularly as this accords with the provisions of Policy 4 of the HDPF.
13. Policies 2 and 33 of the HDPF encourage the effective use of land by re-using that which has previously been developed. Part of the proposed development site is previously developed land but the majority is not so the proposal gains limited support in these policy respects.
14. The proposed building would have a ground floor with rooms in the roof space above and a separate garage/carport building. The design and scale would not be out of keeping with the locality. However, the proposed buildings would be set back from the predominantly linear development along most of Sandhills Road creating a secondary line of residential development behind the existing properties. Notwithstanding existing trees, the proposal would have an urbanising effect in an area where there are currently no buildings particularly as the site is at a higher level than Sandhills Road.
15. I conclude that the appeal site is not one where new development is generally supported in local and national spatial planning policy terms and so is not an appropriate location for a dwelling. This is because the location conflicts with those parts of the Policies 1, 2, 3, 4, and 26 of the HDPF; NP Policy 11 and those principles of the Framework that seek to direct development to the most accessible locations and to protect the countryside from inappropriate development.

Effect on the Arun Valley Sites

16. The Arun Valley Sites are low-lying wetland areas that offer a variety of ecological conditions which provide internationally important habitats with rich flora, fauna and invertebrates and which support important numbers of wintering birds. For proposals where increased demand for water resources is the only pathway for impacts, NE’s Position Statement 2021 is that such developments without mitigation will result in a likely significant effect on the

⁴ Neighbourhood Plan Housing Land Availability Assessments Site Assessments: March-June 2017 (the 2017 Assessment)

Arun Valley Sites either alone or in combination with other developments in the SNWSZ. As it cannot be concluded that the existing abstraction within SNWSZ is not having an impact on the Arun Valley Sites, developments within this zone must not add to this impact. Therefore, such applications, even where mitigation is proposed, must progress to Appropriate Assessment.

17. NE has identified that one way to mitigate the impact would be for development to achieve water neutrality which is ensuring that the use of water in the supply area before the development is the same or lower after the development takes place. The appellant's Water Neutrality Statement (the WNS) proposes mitigation through the use of water efficient fixtures and fittings and rainfall harvesting for both the existing dwelling and the proposed buildings. NE and the Council conclude that, provided the proposed mitigation can be appropriately secured, the proposal would not result in adverse effects on the integrity of any of the Arun Valley Sites. I have carefully considered the proposal in accordance with Regulation 63 of the Habitats Regulations.
18. The Council is of the view that as the proposed dwelling is within the red line of the application site and close to the existing dwelling a planning condition could appropriately secure the necessary mitigation measures. As is the usual practice the Council has proposed a list of conditions in the event that the appeal were to be allowed. Proposed Condition 8 would require full details of the water efficiency measures and rainwater harvesting systems indicated in the WNS to be submitted to and approved in writing by the local planning authority before development above slab level takes place.
19. Proposed Condition 9 states "*The development hereby permitted shall be undertaken in full accordance with the water neutrality strategy (received 14.07.2022). The dwelling hereby permitted shall be first occupied until evidence has been submitted to and been approved in writing by the Local Planning Authority that the approved water neutrality strategy for that dwelling has been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, and completion of the as built Part G water calculator or equivalent. The installed measures shall be retained as such thereafter.*" Aside from the fact that it seems the word "not" should be inserted between "shall" and "be", I have reservations about the likely effectiveness of the proposed conditions.
20. The submitted mitigation measures rely in great part on retrofitting water efficient fixtures and fittings and rainfall harvesting to the existing dwelling. However, a mechanism and timetable for securing this appears not to be specified. Moreover, I would question the way in which the implementation of these measures could be enforced in an existing dwelling without undue intrusion on the occupants. Moreover, there seems to be no mechanism to prevent the change of ownership of the existing dwelling before any permission that might be granted for the proposed dwelling were to be implemented in which case securing implementation may be even more problematical.
21. It also seems to me that it would be very difficult to ensure that future occupiers of both dwellings maintained the fixtures, fittings or white goods in optimum order; never replaced any of these; and never installed additional ones. I have seen no indication of how the operation of the proposed measures would be monitored in the future or an enforcement regime. I am not the enforcing agency and it maybe that the Council has means to ensure

appropriate monitoring and enforcement in a case such as this one but these are not apparent in the evidence before me.

22. As the competent authority, I cannot be sure the proposed conditions are sufficiently robust to ensure that the mitigation measures can be fully implemented and are enforceable in perpetuity and therefore provide a sufficient degree of certainty to pass the Habitats Regulations. On the basis of the available evidence, I cannot confidently conclude that the proposal would not, alone or in combination with other plans and projects, contribute to adverse effects on the integrity of the Arun Valley Sites by way of water abstraction. As such Regulation 63 prevents me, as the competent authority for this appeal, from granting permission.
23. The burden of proof is high and on the basis of the available evidence I cannot confidently conclude that the integrity of the Arun Valley Sites would not be adversely affected. I therefore find conflict with Policy 31 of the HDPF, the environmental objectives of the Framework and the Regulations in this respect.

Other Matters

24. The Council advises it cannot demonstrate a five-year supply of deliverable housing land and indicates the land supply is some 4 years. I have seen no evidence that would lead me to consider differently. Accordingly in terms of Paragraph 11 of the Framework, which is a material consideration, those policies most important for the appeal are deemed to be out-of-date unless the effect on assets of particular importance provides a clear reason for refusal. Footnote 7 explains this includes impacts on designated sites such as protected habitats.
25. Sandhills is a Grade II Listed Building of historical architectural interest. The proposed buildings would be some distance away and separated from Sandhills by an access track and Hele Farm and its garden. There is little by way of intervisibility between the sites and I conclude the proposed new dwelling would have no effect on the Listed Building or the setting in which it is appreciated.
26. I acknowledge the appellant's desire to retire to a smaller eco-friendly property within the village but this may not be the only way of achieving this. Some support has been demonstrated by neighbours but this alone does not lead me to any different conclusions.
27. The appellant has referred to other developments along Sandhills Road and Plumtree Cross Lane. I do not have any details of these and cannot assess whether they would be sufficiently comparable to lead me to a different conclusion in respect of this appeal.
28. It is regrettable that there is conflict between NP Policy 11 and its preamble and that the appellant considers this to be misleading and costly. However, the Policy wording clearly follows the Examining Inspector's recommendations and as the NP has not yet been made the wording to the preamble may change.
29. The appellant considers the sand school has fallen into disrepair and has not been in use for a number of years. However, lack of maintenance in itself would not justify otherwise unacceptable development.

Planning Balance and Conclusion

30. The proposal would add a much-needed dwelling to the housing land supply in part on previously developed land. Future occupiers would have a reasonable level of access to services and facilities by means other than the private vehicle. There would be some benefits to the economy during construction and spend in the local economy, and additional residents would help support the local community. These matters carry substantial weight but are tempered by the small scale of the proposal.
31. There would be some harm caused by the conflict with the spatial strategy set out in the HDPF and the NP. There would be some harm caused to the character and appearance of the area arising from the siting of the proposed buildings in a secondary line of built development. More particularly I have found that I cannot conclude that the development would not be harmful to the protected habitats of the Arun Valley Sites. Due to the impact on these protected habitats the so called 'tilted balance' does not apply. These harms together attract very great weight and outweigh the benefits identified.
32. In failing to comply with Policies 1, 2, 3, 4, 26 and 31 of the HDPF the proposal cannot be said to comply with the development plan taken as a whole. I have found insufficient material considerations, including the Framework, to justify a decision other than in accordance with the development plan. The appeal should be dismissed.

S Harley

INSPECTOR