



Appeal Decision

Site visit made on 2 October 2023

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal Ref: APP/C3810/W/23/3315568

Morelands, Arundel Road, Fontwell, Arundel, West Sussex BN18 0SB

- 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 Mohammed Al-Samaraie of Moreland Property Development Limited against the decision of Arun District Council.
- The application Ref WA/107/22/PL, dated 18 October 2022, was refused by notice dated 22 December 2022.
- The development proposed is 4 No residential dwellings, associated car parking and access.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mohammed Al-Samaraie of Moreland Property Development Limited against Arun District Council. This application is the subject of a separate Decision.

Main issues

3. The main issues are the effect that the proposed development would have on:
 - the character and appearance of the surrounding area, and
 - the Singleton and Cocking Tunnels Special Area of Conservation (SAC), and protected species and/or their habitats on or near the site.

Reasons

Character and appearance

4. The appeal site is situated on the roughly south west side of Arundel Road, within the built-up area boundary of Fontwell. The nearby mainly residential area is mainly characterised by rows of detached and semidetached dwellings with mostly long back gardens set back from both sides of the road, and similar or wider dwellings with shorter front and back gardens in culs de sac from it.
5. The site includes Morelands and its grounds, which are situated behind the substantially set back building at The Laurels, and a lengthy access strip, which adjoins The Ridings. Permission has been granted for the land to roughly north west, south west and south east of the main part of the site to become allotments, orchards and paddocks (open space) within a development including roughly 400 dwellings (the Fontwell scheme), which has begun.

6. The proposal would include three 2 storey 4 bedroom type A dwellings (A1, A2 and A3), which would be sited close to one another and close to the road in the south east part of the site, and one 2 storey 3 bedroom type B dwelling, which would be sited towards its west corner. So, the road, parking spaces and an irregular shaped wildlife space would take up most of the depth and roughly half of the width of the north west part of the site (excluding the access strip).
7. Dwellings A1 and A2 would be about as deep as their back gardens, and their modest roughly north facing front gardens would be unlikely to support much planting. Dwelling A3 would have a discordant relationship with dwelling A2 and the street, and the outside edge of its car port roof would be uncomfortably close to the road. There would be almost no space between the wider and shallower dwelling B and the road, it would face the turning area and the side of dwelling A3, and its back would be close to the north west and south west boundaries. There would be little space for planting in dwelling B's front garden, its shallow roughly triangular back garden would be small, and its deep but tapered side garden would be poorly aligned with the dwelling. So, the proposed dwellings would be unacceptably squeezed in.
8. The outlook from the west and south facing openings in dwelling B's kitchen/dining/living room would include the tall hedge and trees by the boundary close by, so the occupiers could feel hemmed in. Whilst the outlook from their only shared indoor space would not be so overbearing or so oppressive that it would harm their living conditions, it would be harmfully at odds with the local character.
9. The density of the proposal would be lower than other nearby developments including The Ridings and the Fontwell scheme. However, as most nearby development on the south west side of Arundel Road includes dwellings set in verdant front and back gardens, the tight knit courtyard style layout would contrast starkly with the local pattern of development. Because the local landform slopes down to roughly south, the substantial dwellings would dominate the nearby views from the open space within the Fontwell scheme. Moreover, due to the bulk, scale and siting of the dwellings and the extensive hard surfaces within the site, and as the mostly narrow spaces between them would be likely to be enclosed by tall boundary treatment, the built-up character of the proposal would erode the sense of place.
10. Therefore, I consider that the proposed development would harm the character and appearance of the surrounding area. It would be contrary to Policy D SP1 of the Arun Local Plan 2011-2031 (LP) which aims for proposals to reflect the characteristics of the site and local area, LP Policy D DM1 and Policy HP13 of the Walberton Neighbourhood Development Plan 2019-2031 (NP) which seek high quality design and respect for context, the thrust of NP Policy HP11 which aims for development to be appropriate to its location, and guidance in the Arun District Design Guide Supplementary Planning Document (SPD). It would also be contrary to the National Planning Policy Framework (Framework) which seeks the creation of high quality, beautiful and sustainable buildings and places.

SAC and protected species

11. The appellant's preliminary ecological appraisal (PEA) dated October 2021 identified the likely presence of protected species including bats and reptiles on the site and recommended further surveys for bats and reptiles, which were

carried out and which are similarly dated October 2021. The PEA states that there are no Statutory Protected Sites within 1 km of the site, but the PEA and bat survey did not mention the SAC. However, the Council has identified multiple Barbastelle bat records in nearby woodlands including Slindon Bottom. So, it is possible that Barbastelle bats could use the site as a commuting route between woodlands.

12. The site is within the 12 km buffer zone of the SAC. In determining this appeal, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
13. The proposed development would increase the amount of development and activity within the buffer zone. So, this proposal, in combination with other plans and projects, could be likely to have a significant effect on the SAC due to its impact on the foraging habitat and/or commuting flight lines of Barbastelle bats associated with the SAC. As the proposal would not be directly connected with or necessary for the management of the SAC, it would be necessary for me to undertake an appropriate assessment of the implications of the proposal for the SAC in view of its conservation objectives. I could only grant planning permission if I were to ascertain in that appropriate assessment that the integrity of the SAC would not be adversely affected. However, as the proposal would not be acceptable for other reasons, it is not necessary for me to undertake an appropriate assessment. So, I have not pursued the matter further with the parties.
14. The PEA assessed the dwelling as having high bat roost potential and one ivy clad ash tree as having low bat roost potential, but it does not specify a period of validity. Two bat surveys were carried out in August 2021 and September 2021, and the appellant's consultant has explained why a third survey was not recommended at the time. As the surveys were carried out more than 2 years ago, circumstances at the site may have changed. Even so, no update, and no precautionary mitigation measures for bats have been put to me.
15. The reptile survey, which was based on visits during September 2021, identified a small population of slow worms, and it stated that common lizards could also be present. Dislocation is recommended, but the mitigation measures proposed are not appropriate because they include the use of a mechanical digger, which could kill or injure reptiles, they include insufficient preparatory works to increase reptile carrying capacity at the receptor before clearing vegetation, and there is insufficient detail including timings, temperature and methods of work.
16. The appellant says that updates to the protected species surveys and mitigation measures could be dealt with by means of planning conditions. However, ODPM Circular 06/2005 Biodiversity and geological conservation – statutory obligations and their impact within the planning system explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. So, as no exceptional circumstances have been put to me, it would not be reasonable to deal with the interests of protected species that may be affected by the proposal by means of planning conditions.

17. Thus, even if an appropriate assessment were to conclude that the integrity of the SAC would not be adversely affected, I consider that the proposal would be likely to adversely affect protected species and/or their habitats on or near the site. It would be contrary to LP Policy ENV DM1 which aims to safeguard intrinsic natural features of particular interest, NP Policy VE10 which seeks to safeguard protected species and habitats, the Habitats Regulations, and the Framework which seeks to conserve and enhance the natural environment.

Other matters

18. The Council cannot demonstrate a 5 year supply of deliverable housing sites and the shortfall is acute. So, Framework paragraph 11 d) is relevant. The proposal aims to make more efficient use of land within a reasonably accessible location, and its other benefits would include 3 welcome new homes, jobs during construction, and the future occupiers' likely support for local shops and services. However, even if an appropriate assessment were to conclude that the integrity of the SAC would not be adversely affected, as the harm identified in my first main issue and the harm to protected species and/or their habitats identified in my second main issue would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, planning permission should not be granted.

Conclusion

19. I have found that the proposed development would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.
20. For the reasons given, the appeal should be dismissed.

J Reid

INSPECTOR