



Appeal Decisions

Site visit made on 2 October 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2023

Land to south of Dukes Road, Fontwell, Westergate, Arundel BN18 0SP

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant outline planning permission.
- The appeals are made by Lily Homes against the decisions of Arun District Council.
- The development proposed in both appeals is 'application for outline planning permission for the erection of 9 residential dwellings with some matters reserved'.

Appeal A Ref: APP/C3810/W/23/3319189

- The application Ref AL/179/22/OUT, dated 8 December 2022, was refused by notice dated 10 February 2023.

Appeal B Ref: APP/C3810/W/23/3313681

- The application Ref AL/39/22/OUT, dated 28 March 2022, was refused by notice dated 22 June 2022.
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Decision

1. Appeal A and Appeal B are both dismissed.

Applications for Costs

2. Applications for costs were made by Lily Homes against Arun District Council. These are the subject of separate Decisions.

Preliminary Matters

3. There are two linked appeals on this site. The main parties agree that the proposal is identical in each appeal. I therefore refer to 'the proposal' for convenience and to the singular, unless otherwise indicated.
4. Both applications are in outline and consider the principle of the proposal, its layout and access. Details of appearance, landscaping and scale are reserved for future determination. The appellant has, though, referred to some of these details, including a street scene plan¹ for two-storey houses and in the application form and a schedule of accommodation. The appellant says this plan is indicative, the schedule is preliminary and dwellings would be 'up to' two-storey. I have therefore not treated any of these details as part of the proposal but a possible way the site could be developed in these respects.
5. As part of Appeal B, the appellant submitted a Highways Matters Appeal Statement July 2022, an Ecological Impact Assessment November 2022 and an Ecology Mitigation and Enhancement Statement December 2022. The Council has confirmed in writing that it considers these overcome reason for refusal (RfR) 2 and RfR3 in this decision notice and both reasons are withdrawn.

¹ Drawing number L3000 Rev P1

6. In each appeal the substantive wording of the Council's objection in RfR1 is the same and both refer to Policy C SP1 of the Arun Local Plan July 2018 (LP) and to Policy EH1 of the Aldingbourne Neighbourhood Plan June 2021 (NP). In Appeal A, RfR1 also refers to LP Policies SD SP2 and D DM1. In Appeal B, RfR1 also refers to NP Policy H6 and the appellant submitted a context layout plan² and a Fontwell density comparison plan as part of this appeal.
7. Despite this difference between the policies listed in each RfR1 and Council officer reports, all parties have been able to consider all these policies as well as the additional plans in Appeal B, which are also relevant to Appeal A. These plans do not alter the proposal as was originally applied for³. All these policies are before me and the planning merits of each appeal are the same.
8. Considering all the above, I have determined both appeals on the same basis.
9. The Council provided a copy of an appeal decision⁴ as part of its response to the appellant's costs applications. It was not, though, part of the Council's appeal case so I have not taken it into account in my appeal decisions, nor the appellant's response in its final costs comments in this respect.

Main Issues

10. The main issues in both appeals are:

- whether the appeal site is a suitable location for the proposal with reference to the development plan spatial strategy, including accessibility to local services and facilities; and
- its effect on the character and appearance of the area, including with regard to layout and access.

Reasons

Location

11. A built-up area boundary (BUAB) is defined by the LP for the main towns and villages in the district. LP Policy SD SP2 states that development should be focussed within these boundaries. NP Policy EH1 permits development within the BUAB of Westergate, as defined by the NP. However, the site is outside of it so in the countryside for the purposes of planning policy. In this location LP Policy C SP1 restricts development other than specified uses or types (a closed list of exceptions to 'should' in LP Policy SD SP2). These do not include the proposal and no other development plan housing exception has been suggested. The site is not allocated for development or included in the Council's Housing and Economic Land Availability Assessment (HELAA).
12. The main parties agree there is a demonstrable shortfall of housing land supply having regard to the requirements of the LP. In these circumstances NP Policy EH1 permits development outside the BUAB if all criteria of this policy are met, otherwise it is resisted. This includes criterion (v) that the development is sustainably located and accessible to local facilities and services.

² Drawing No. 062-L1002

³ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin) and Planning Inspectorate Procedural Guide – Planning Appeals – England, June 2023

⁴ APP/C3810/W/22/3293935

13. There is no evidence that the site is next to any settlement with a BUAB and facilities or services. The nearest BUAB is a significant distance away and south of the A27. Even if Fontwell is a town, its centre is said to be over a mile from the site. There is anyway no evidence about specific facilities or services in Fontwell or how these can be safely accessed by a mode of transport other than a car. Similarly, with respect to Eastergate. The site is flanked by existing buildings and fronts a well-used highway but this alleged 'settlement form' is not sufficient in nature or intensity to constitute a settlement, including that no facilities or services have been suggested as part of it.
14. The Shell Fontwell Store at the service station south of the A27 includes a Little Waitrose franchise open 24 hours a day and next to it two fast food restaurants. There is a bus stop in each direction on the A29, just south of the roundabout with the A27. The timetables displayed indicate a good frequency of services all week and during public holidays, including to Chichester and Littlehampton so to a greater range of facilities and services.
15. However, access to the service station and these bus stops would require a long walk from the site and for the most part along Dukes Road. This narrow, initially single track rural lane has no pavements or street lighting and few verges or passing places not tight against roadside hedgerows or fences. Though mostly straight it curves towards the A27 with a gradient in both directions. There is a safe crossing of the A27 via a lit underpass and at my visit Dukes Road was lightly trafficked with low speeds, albeit not at peak travel times and it is subject to the national speed limit (60mph). It is also a route to a car park for visitors to the National Trust Slindon Estate, is used by horse riders and is well-used according to the appellant.
16. Some local residents already walk along Dukes Road who may use the service station or bus stops and there is no formal accident record. Nevertheless, neither consideration justifies further reliance on this lane or renders it conducive or safe to use by new residents of the proposed 9 dwellings, including children or infirm persons. There would therefore be unacceptable increased risk of vehicular and pedestrian conflict, accident or injury.
17. Despite no dedicated cycle lane in Dukes Road some new residents could ride to the service station. However, and even if also walked to, these facilities and services could meet some day-to-day convenience needs; but are otherwise limited in scale or range, intended mostly for casual passing motorists rather than residents' sustained weekly household shopping requirements. The proposal for 9 dwellings would therefore appreciably increase travel demand and new residents would be mainly reliant on a car to meet most living needs.
18. The site is closer to the service station than in an allowed appeal for a single dwelling at Sundown in nearby Littleheath Road⁵. However, the current appeal is for 9 dwellings and the considerations outlined above are not inconsistent with that Inspector's reasons and finding on essentially the same main issue or, for the same reason, another Inspector in an allowed appeal for up to 155 dwellings on land further away at Tye Lane⁶, which was adjacent to a BUAB. The planning balance reached by both Inspectors were separate matters, including informed by the individual planning merits of each appeal. There is no evidence that new neighbouring dwellings on greenfield sites in Dukes Road

⁵ APP/C3810/W/19/3241407

⁶ APP/C3810/W/21/3278130

were granted planning permission under the current development plan or were not replacement dwellings or conversions of existing buildings.

19. Taking account of all the above, I find that the appeal site is not a suitable location for the proposal with reference to the development plan spatial strategy, including by virtue of its limited accessibility to limited local services and facilities. Consequently, the proposal would undermine and harm objectives of the development plan in these regards. It therefore conflicts with LP Policy C SP1 and also with LP Policy SD SP2 and NP Policy EH1. The Council cited NP Policy H6 in RfR1 in its decision notice in Appeal B but this policy applies to windfall sites within a BUAB so is not relevant to either appeal.

Character and appearance

20. The appeal site is a large, open flat field or paddock with a wide frontage along the south side of Dukes Road. It is bounded by hedgerows and in places trees. On one side of it is a small cluster of dwellings both sides of this road at a junction with Days Lane and Slindon Bottom Road. These properties vary in size, type, orientation and set back from the road, in discrete landscaped plots of different sizes, so generally have a low-key presence in these rural lanes. Next to the other side of the site a dwelling has similar features.
21. Some outbuildings, including in an agricultural contracting and firewood storage yard, extend along the north side of Dukes Road up to a field facing the site. Further northwest on the south side, towards the junction with Littleheath Road and the dwellings in that lane, is a long ribbon of closely spaced detached and semi-detached houses, chalet bungalows and bungalows. These vary in design but are broadly uniformly sited in a straight line in mostly similar size and shape plots close to the road edge with individual vehicular accesses. They give a more enclosed, built-up appearance to this stretch and side of Dukes Road.
22. All these dwellings are part of a pocket of dispersed, mostly low density looser knit residential development along these lanes north of a section of the A27, interspersed with or bordered by undeveloped fields, hedgerows or trees. As such, this area has a distinctly remote, semi-rural feel where visually and spatially the landscape not built form generally prevails. The site therefore makes a positive contribution to local character and appearance.
23. The layout of the proposed detached and semi-detached dwellings in a closely spaced row and the depth and shape of rear gardens would reflect the ribbon of dwellings. However, the building line would be significantly further back from the southern edge of Dukes Road. Although this would reflect the siting of the dwelling each side of the site, the plot sizes and widths would be narrower, smaller and different in shape to both of these dwellings and sub-divide the site with a greater quantum and intensity of residential form and use next to these dwellings. The Fontwell density comparison plan includes a wedge of land on the site, along the southwest boundary, which in the proposed layout is outside of the individual dwelling plots. This is not a like for like comparison with the ribbon of dwellings so underplays the alleged equivalent proposed density of development.
24. The gap between existing development on the south side of Dukes Road formed by the site is small in relation to the length of the lane between the junctions. But it is more than sufficiently wide (approximately 110m) and

completely open that there is no solidly developed frontage along the entire south side of the lane. This parcel of open land punctuates the streetscene to separate the cluster of dwellings at one end and the ribbon of dwellings at the other. It also complements the open countryside and rural uses along most of the north side of the lane. While 9 dwellings in the layout proposed would fit into this site dimension, they would nonetheless fill the entire width of this gap.

25. None of the dwellings would have individual vehicular access off Dukes Road. The layout and provision of two shared accesses with an internal service road running parallel behind the lane, even if not hard surfaced, is more akin to an engineered urban estate private drive. There is no evidence of a precedent for such an alien feature in Dukes Road, nor of anything like it in the lanes nearby.
26. As a result, despite a linear arrangement of dwellings on the site the proposal would be out of kilter with important features of the existing ribbon of dwellings and those immediately either side or near the site. It would not, therefore, be 'identical' to residential development in Dukes Road or be 'fully assimilated'. It would instead erode the integrity of the break between, and relief from, existing built-form in the lane and unduly consolidate an already more densely built-up frontage to the northwest by a continuation of that form of ribbon residential development along the lane.
27. The adverse impact and change to the intrinsic nature of the site would be a significant encroachment in this part of the countryside; not only by residential buildings but associated external domestic use and paraphernalia. The proposal would erase 'the only gap of note' on the south side of Dukes Road so is intrinsically worthy of retention. It would be at odds with the prevailing semi-rural feel to the area and a more urban appearance in this part of Dukes Road would jar and detract from the integrity of how this rural lane is currently experienced including in sequence along it.
28. The wedge of open land, and if landscaped, would be behind the dwellings or too distant from the lane to alleviate these impacts. Consequently, even if the dwellings were single storey, and despite the retained parts of the roadside hedgerow, the extent and pattern of development in the proposed layout and access would still be obvious in public views from Dukes Road opposite and from both directions. No matter if inherently high quality, details of appearance, landscaping or scale would not, therefore, overcome these innate adverse impacts of the proposal. Accordingly, I am not satisfied that a suitable scheme for 9 dwellings with the proposed layout and access has been justified or could be resolved at a reserved matters stage.
29. There is no objective evidence to support what is therefore speculation that the site was purposefully leftover or set aside in expectation of further housing development, whilst dwellings were being built on the rest of this side of Dukes Road. But even if this was the case, it would not change the adverse impacts of this particular proposal outlined above. Nor is there any such evidence that developing the site as proposed is necessary to achieve 'a fully developed frontage' along the south side of this lane.
30. At Sundown, the Inspector found that infilling a much narrower gap with a single dwelling, between existing dwellings in spacious landscaped plots, would not harm the low density character or appearance of Littleheath Road. Though near the current appeal site, those dwellings are out of sight or physical proximity to dwellings in Dukes Road and the site. At Tye Lane the Inspector

found that the urbanising effect of the significant number of proposed dwellings was ameliorated by location of that site surrounded by existing sub-urban development. Neither appeal decision is therefore comparable in these respects to the current appeal.

31. Considering all the above, I find that the proposal would cause unacceptable demonstrable harm to the character and appearance of the area, including in layout and access. Consequently, it conflicts with LP Policy C SP1 and also with LP Policy D DM1 and NP Policy EH1. These policies include that the countryside will be recognised for its intrinsic character and beauty. In addition, that development should reflect the character of the site and surrounding area, including siting and layout, to be sensitively located and maintain local distinctiveness.

Other Matters

South Downs National Park (SDNP)

32. The appeal site lies near the boundary of the SDNP and it is common ground that the proposal would be in its setting and dark skies. The South Downs National Park Authority commented on the proposal but did not object considering that there would be some intervening development or landscape features, no visual relationship between the proposal and the edge of the SDNP and opportunity to apply planning conditions. Nor did the Council object due to the SDNP. I am, therefore, satisfied that in respect of the SDNP a suitable form of development could be achieved at reserved matters stage. On this basis, the proposal would be sensitively located in the setting of the SDNP and minimise adverse impacts on the SDNP. This would conserve the natural beauty, wildlife and cultural heritage of the SDNP.

Singleton and Cocking Tunnels Special Area of Conservation (SAC)

33. The site is within a zone of influence of the SAC, a European protected site. A significant individual or in-combination adverse effect on the SAC would be likely to occur from residential development due to impact on suitable bat foraging habitat or commuting flight lines, including artificial lighting, unless these are not used by Barbastelle, Bechstein or other bats linked with nearby roosting sites. The ecology reports submitted with Appeal B include bat surveys and bat mitigation and compensation measures. Subject to planning conditions at reserved matters stage, the Council does not object to the proposal in this respect and considers a suitable form of development could be achieved, also in appearance, landscaping and scale, without harm to the integrity of the SAC.

Planning Balance

34. The main parties agree that the Council currently cannot demonstrate a 5-year supply of deliverable housing sites, with a 2.36 year supply which is less than in previous years. Also, that the most recent Housing Delivery Test (HDT) has not been met. Either way, by virtue of footnote 8, National Planning Policy Framework (Framework) paragraph 11(d) is therefore engaged and the starting point is that planning permission should be granted. In this case the NP became part of the development plan more than two years ago and the Council has less than a 3-year supply of deliverable housing sites. All the provisos of Framework paragraph 14 are therefore not met so it does not apply in these appeals.

35. Though not previously-developed land⁷, and that there is no apparent reason why the site cannot remain in its present use so not under-utilised, market dwellings on this small or medium sized windfall site in the countryside would make efficient and effective use of it for housing which could be built relatively quickly. This modest but notable contribution towards meeting the Council's housing requirement would also sustain employment during construction. Some hedgerow and grassland would be lost but there would be habitat enhancement on the site. These outcomes would align with objectives of the Framework to significantly boost the supply of homes, meet people's living needs, support the economy and achieve net gains for biodiversity. While these would be moderate social, economic and environmental benefits from 9 dwellings, I consider they each have significant weight in support of the proposal.
36. However, while the dwellings would not be remote in terms of proximity to nearby buildings, they would not be in or next to any settlement⁸. These isolated homes in the countryside would not meet any of the circumstances set out in Framework paragraph 80(c) and no other Framework exception for housing in the countryside has been suggested. There is no evidence that 9 dwellings would support or grow any rural settlement in a significant or meaningful way to meet community needs, enhance or maintain the vitality of rural communities or use local services other than the service station, and it has not been suggested that this facility is not currently financially viable.
37. The proposal would not promote walking, cycling or public transport in any meaningful way or result in a pattern of development that supported these aims or ensured the safety of a significant number of pedestrian residents who would occupy 9 dwellings. While transport opportunity varies between urban and rural areas, the dwellings would not be in a location that is or could be made sustainable by limiting the need to travel or offer a genuine choice of travel modes.
38. The proposal would undermine the Council's development plan objectives in these respects. It was adopted and made in the context of a previous Framework and the (current) Framework is not materially different in these regards. Accordingly, despite the housing land supply position the entire development plan is not out-of-date nor is the NP immaterial or have no weight, as has been suggested to me. The policies relevant to housing delivery and most important to determining these appeals remain broadly consistent with these rural housing and sustainable transport objectives of the Framework. Consequently, given the housing land supply position, while reduced weight applies to the conflict with these development plan policies, in my view, they still have moderate weight against the proposal.
39. Once developed the contribution of most of the site to the character and appearance of the area would be permanently lost and undermine development plan aims in these respects. These are also broadly consistent with objectives of the Framework to conserve the natural environment and to recognise the intrinsic character and beauty of the countryside. The Framework also aims to ensure that new homes on appropriate land in rural areas achieves well-designed places. In this case the proposed layout and access for 9 dwellings

⁷ Framework Annex 2: Glossary

⁸ *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610 and *City and Country Bramshill Ltd v SSHLG and others* [2021] EWCA Civ 320

would not sufficiently reflect the pattern of existing local residential development or integrate with the countryside and not maintain a semi-rural sense of place.

40. I accept that rigorous or pedantic application of the Council's spatial strategy would undermine attempts to remedy the housing deficit. I also acknowledge that although the Council has taken initiatives (Action Plan, a default presumption in favour of sustainable development to decisions it makes⁹, inviting applications on sites identified in the HELAA and an Interim Policy Statement for Housing Delivery on sites adjacent to a BUAB) there is no evidence yet of notable immediate improvement in housing delivery.
41. Nevertheless, and notwithstanding the serious shortfall in this case, the support given in the Framework to delivering housing is not, in my view, at the expense of ensuring that residential development is appropriately located and suitable in relation to its surroundings to avoid undue proliferation of housing and unjustified unacceptable harm to the countryside. These are matters that details of appearance, landscaping and scale or planning conditions cannot rectify in both appeals. Accordingly, redevelopment of the site with 9 dwellings in the layout and access proposed would be at odds with these local and national planning policies. I consider that these individually important and cumulatively compelling adverse social, environmental and economic impacts have substantial weight against the proposal.
42. In these appeals the application of policies in the Framework that protect some areas or assets of particular importance (the SDNP) do not provide a clear reason for refusing the development. As the competent authority it would, though, ordinarily be necessary for me to undertake Appropriate Assessment¹⁰ with respect to the SAC. However, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Consequently, the presumption in favour of sustainable development does not apply in either appeal.
43. Since I intend to dismiss both appeals, even if the proposal did not adversely affect the integrity of the SAC, so not provide a clear reason for refusing the development, there is no need for me to consider the SAC any further. This is because it would not affect my decisions or alter the outcome of the appeals.

Conclusion

44. The proposal conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations which override these findings or indicate that the decisions should be taken other than in accordance with the development plan¹¹. Consequently, for the reasons given above the proposal is unacceptable and both appeals do not therefore succeed.

Robin Buchanan

INSPECTOR

⁹ Reflecting the HDT position

¹⁰ Conservation of Habitats and Species Regulations 2017 (as amended)

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12