



Appeal Decision

Site visit made on 21 November 2023

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/C3810/W/23/3318827

The Paddock, Littleheath Road, West Sussex, Aldingbourne BN18 0SR

- 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 Wayne Lynes (Acopia Holdings Ltd) against the decision of Arun District Council.
 - The application Ref AL/126/22/OUT, dated 29 July 2022, was refused by notice dated 28 September 2022.
 - The development proposed is application for outline planning permission (with some matters reserved) for 9 new dwellings (houses and bungalow) with wildlife corridors following demolition of existing 4 bedroom chalet bungalow and assorted outbuildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission is sought, with approval for layout, and access. Appearance, scale, and landscaping are reserved matters. I treat details of the reserved matters as indicative.
3. The planning application included landscaping amongst the matters for approval, fuller details of which were provided with the appeal. Noting the comments of other interested parties, accepting the details for approval at the appeal stage gives rise to a heightened risk of potential prejudice as it removes parties with a proper opportunity to influence the detail of the landscaping scheme (should the proposal be otherwise acceptable).
4. To address this issue, and with the agreement of the parties, the appeal is proceeding based on landscaping being a reserved matter. The details submitted with the appeal are treated as indicative. No change to the description of development is needed and I am satisfied that the risks of prejudice are at an acceptably low level.
5. The Council's reason for refusal 2 relates to effects when regard is paid to biodiversity. Following consideration of additional information, the Council confirmed that they no longer wished to defend this reason for refusal. As such, as there is no dispute or material reason for me to press the matter, it does not form a main issue in the appeal.
6. The site is within the 12km buffer zone for the Singleton and Cocking Tunnels Special Area of Conservation. In light of my intention to dismiss the appeal there is no requirement to carry out appropriate assessment of potential effects. As such, it is not necessary for me to address this issue further.

7. Development plan policies of principal focus are contained within the Arun Local Plan (Local Plan) and the Aldingbourne Neighbourhood Plan (Neighbourhood Plan). The National Planning Policy Framework (Framework) is a material consideration.
8. I have noted that a resubmitted application for development on the site was refused by the Council in May 2023 (council ref : AL/36/23/OUT). My decision relates to the proposal in front of me, along with the accompanying evidence. It focuses on the areas of disagreement between the Council and the Appellant in this case, rather than a scheme that is not before me. I have noted potential areas of dispute in relation to drainage associated with that proposal. It is not appropriate for me to address this matter in substance as a main issue in this appeal. Whilst making me aware of the situation, the Council also confirm that that they do not wish to attempt to introduce a new reason for refusal at the appeal stage. I have proceeded on this basis.

Main Issues

9. The main issues are:
 - Effects on the character and appearance of the area, and accordance with related policies that guide the location of new housing development.
 - Whether the proposal would create acceptable living conditions for future occupants when regard is paid to noise.
 - Whether the proposal would create acceptable living conditions for future occupants when regard is paid to air quality.

Reasons

Character and appearance

10. The character of the area is predominantly rural, with open fields and extensive tree cover providing a wooded setting. Built development is informally arranged, generally at lower density within spacious plots. Littleheath Road has the character of a rural lane, it's narrow width and dense planting at the boundary provides visual enclosure and shadowing. There is a more obvious built presence on the east side of the road, with open fields (at times glimpsed through trees) more evident on the west side.
11. The A27 becomes increasingly audible and visible through the gap in the road approaching the site down Littleheath Road. Despite its audible presence, the influence of the A27 on the visual character of Littleheath Road (and the site) is limited to some degree by the wooded setting. Littleheath Road itself does not directly access the A27, which prevents through traffic and reduces further the visual and functional link it has with the busy trunk road. This gives the road a level of tranquillity that belies the location close to the A27 and its obvious audible presence.
12. The site currently includes a range of buildings. The existing bungalow is the most obviously domestic in character and includes with it extensive gardens and hardstanding. Other associated land and buildings across the site gives a more rural appearance, generally arising from the openness and greenery of being laid to field and the informality of buildings that suggest visual and functional subservience to the land.

13. The proposal would alter the character of the site by introducing additional dwellings with a consequent increase in residential density and activity. It would all but remove the more rural characteristics of the land and provide the greater formality that is to be expected of a shift towards more domestic use. This would be a permanent spatial change. The submitted landscaping details indicate that a well implemented scheme can maintain a sense of openness and greenery. This would offer some mitigation, however the spatial change in the characteristics of the land would still be fundamental, despite an acknowledged accordance with density guidance in the Design Guide. Further mitigation also arises because of the site being on the east side of Littleheath Road, where a built domestic presence is already a spatial characteristic.
14. The visual effects of the proposal would be highly localised due to the relatively flat topography and the site being visually contained by the A27 and extensive tree cover. The latter would be retained and could be enhanced further through a quality landscaping proposal, the density of the scheme would allow for this. The proposed layout maintains an appropriate distance between the buildings and the boundary of Littleheath Road, which would assist further with visual containment. As such, the proposal would not encroach on the countryside beyond the site in a harmful way.
15. I have limited evidence regarding effects on dark skies. However, the existence of a dwelling on the site presently and location close to the A27 leads me towards a conclusion that an acceptable lighting scheme across the site, coupled with a sensitive detailed design has a reasonable prospect of managing any such effects. A lighting scheme could be required by condition.
16. Although a greater density of residential development is proposed, it is not of a scale where domestic activity and associated comings and goings are likely to materially affect the character or tranquillity of the area, including Littleheath Road's function as a more rural lane.
17. Weighing things up, whilst there would be some adverse effects arising from the change in the spatial characteristics of the land, the overall impact on the character of the area would be moderate. This is mainly due to the limited visual effects and the spatial change occurring on the side of Littleheath Lane with the more obvious existing domestic presence. There is a good prospect that effects could be mitigated further through a detailed proposal at the reserved matters stage.
18. Taking account of the above, the proposal would generate moderate adverse effects on the character and appearance of the area, with resulting conflict with the development plan for the area. The location of the site, outside a built up area boundary for the purposes of policy in the Local Plan and Neighbourhood Plan, also results in associated conflict with Policy C SP1 and Policy EH1 in the respective plans on principle. Policy C SP1, in particular, characterises the land as countryside that will be recognised for its intrinsic character and beauty. Policy EH1 is similarly restrictive as a matter of principle. I shall return to the weight to be attributed to these policies later in the decision.

Living conditions – Noise

19. The proposal is for residential development likely to experience noise from road, due to its close proximity to the A27. As such, it must be subject to specific consideration under Policy QE DM1, Local Plan to ensure that development is designed to ensure that residents will not be adversely affected by noise.
20. Approval is sought at this stage for the layout, which shows 4 of the 9 dwellings in a row on the southern part of the site separated from the A27 by an access road and landscape corridor. Given the intention to fix the layout, I have considered the proposal on this basis. I appreciate that scale, appearance, and landscaping all have the potential to affect the future living conditions of residents when it comes to noise. However, in the absence of a detailed scheme, I can only base my conclusions on the evidence I have and reach a judgement of whether there is a reasonable likelihood of an acceptable scheme coming forward at the reserved matter stage that will address any unacceptable adverse impacts.
21. The Appellant's noise evidence¹ provides an appropriate basis on which to consider the proposal. At all times of day, the site is classified as being within a high risk category where there is an increased risk that development may be refused on noise grounds. I experienced the noisy character of the site for only a relatively brief period of time but left with a clear impression about fundamental importance of design to the acceptability, or otherwise, of the proposal in noise terms.
22. The evidence indicates that windows would need to be closed in order for acceptable standards of internal noise comfort to be achievable. A strategy for managing this issue in overheating terms may well be possible². However, this overlooks the more fundamental question of whether, all things considered, the need to keep windows closed would make for a healthy and comfortable standard of accommodation that would be expected of a well designed proposal.
23. It is reasonable that future residents of the development would expect to be able to open their windows, particularly in fine weather. Being able to open windows (and patio doors) in a dwelling is an essential part of everyday life, and something which most people take for granted. Forcing future residents to make a choice between opening windows and tolerating road noise at the levels identified in the Appellant's noise evidence would create an oppressive living environment, inconsistent with the principles of good design.
24. In addition, keeping windows closed would rely on the actions of third parties (i.e. future occupants) to be effective and is therefore not in itself a reliable form of mitigation. Requiring a large number of windows to be fixed shut by condition would not be reasonable/desirable across a development of this scale.
25. Even keeping in mind that appearance and scale are reserved (along with other aspects of what might be regarded as more detailed design), the evidence does not demonstrate the reasonable likelihood that an acceptable scheme would come forward based on the layout submitted for approval that would create

¹ Principally contained in Sound Advice (March 2022)

² As indicated in Stroma (March 2023)

acceptable internal living conditions for future occupants when regard is paid to noise.

26. Consistency of Council decision making in relation to the sites at Orchard Way and Gatehouse Mews, has little influence on my decision given the available evidence and the focus I have on the proposal at hand.
27. In relation to external living areas, in light of the likely use of such spaces and standards that apply, I am satisfied that a combination of acoustic screening alongside the A27 and detailed landscaping (which is reserved) have a reasonable likelihood of being effective, and therefore creating acceptable living conditions for outside spaces. This does not, however, offset my concerns about the internal living spaces, including by providing a relatively quiet external amenity space for the sole use of the occupants of the dwellings.
28. The proposal would not create acceptable living conditions for future occupants when regard is paid to noise. Consequently, it would conflict with Policy QE DM1, Local Plan in relation to development being designed to ensure that residents will not be adversely affected by noise.

Living conditions – Air quality

29. The Council's officer report cites part of Policy QE SP1, Local Plan relating to the location of existing industrial and commercial uses. The direct relevance of that part of the policy in the present circumstances is questionable. However, the policy does seek to require all development to contribute positively to environmental quality and ensure that development does not have a significant negative impact upon residential amenity. I am satisfied that Policy QE SP1 can be legitimately interpreted to include creating good living conditions for future occupants of development when it comes to environmental quality. Ensuring safe and healthy living conditions is also, amongst other things, at the heart of promoting effective use of land under Paragraph 119, Framework.
30. It has not been drawn to my attention that the site and surroundings are within an Air Quality Management Zone. Nevertheless, assessment of the air quality effects arising from the A27 on potential occupants of the proposal is appropriate considering the proximity between the site and the road.
31. The Appellant's air quality evidence³ provides a good basis for judging the proposal. Whilst inevitably a question of professional judgement, the Appellant's reasoning for using data from Gatwick and terminating tube monitoring after 3 months are reasonable and does not introduce material weakness into the assessment. The differences in output resulting from Tube 36 when compared with Table 12 of Stroma (March 2023) are reasonably explained by the roadside location of Tube 36. This data does not therefore provide as fair a reflection of site conditions as the information provided by the Appellant.
32. On the basis of the evidence provided, the proposal would create acceptable living conditions for future occupants when regard is paid to air quality. Consequently, there is no conflict with Policy QE SP1, Local Plan in relation to environmental quality.

³ Principally contained in Stroma (March 2023) and Stroma (October 2023)

Other Matters

33. I have paid regard to comments from other interested parties. Comments relating to the main issue have been considered as part of my conclusions elsewhere in this decision. Other comments do not affect my conclusions on the main issues or the overall outcome of the appeal.

Conclusions

34. The proposal would generate moderate adverse effects on the character and appearance of the area and would not create acceptable living conditions for future occupants when regard is paid to noise. There is conflict with policies in the development plan that flows from this harm that, in light of the severity, I regard as conflict with the development plan taken as a whole.
35. The Council's present housing land supply position stands at 2.36 years. This is a marginal drop from the 2.42 years at the time of the decision, which makes no material difference to my findings other than to instil little confidence that the situation will be remedied anytime soon.
36. Because of this, the policies which are most important for determining the application are out of date. Therefore, the tilted balance in the Framework is engaged, such that there is a presumption in favour of granting planning permission for sustainable development, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
37. For the avoidance of doubt, in my overview of benefits and harms below I use the rising scale of limited, moderate, significant and substantial.

Benefits

38. The proposal would deliver 8 additional dwellings built to modern efficiency standards, with associated social benefits linked to their occupation. Although reserved matters would need to be agreed, the scale and nature of the development is such that I am confident that the homes could be delivered relatively quickly. This would support the Government's objective of significantly boosting the supply of homes (Paragraph 60, Framework). Although it is a relatively small development, its contribution would be meaningful against the backdrop of a very poor housing land supply position and in light of the important contribution that small and medium sized sites can make to meeting the housing requirement of an area (Paragraph 69, Framework). Significant weight is given.
39. Economic benefits linked to construction and spend in the local economy are generalised, unevidenced, and hard to attribute to a development of this scale. This attracts no more than moderate weight. The size of the site is such that there is potential for biodiversity and other environmental enhancement. This could be secured by condition. It attracts limited weight as the question of whether such enhancements would mitigate for adverse effects (rather than representing a benefit) is not consistently evidenced.

Harms

40. The proposal would not create acceptable living conditions for future occupants when regard is paid to noise. The Framework is clear that planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for future users (Paragraph 130, Framework). Policy QE DM1, Local Plan provides an appropriate and proportionate local basis for securing this outcome and is in my view consistent with the Framework. Whilst it would meet the need for new homes, I have significant concerns that the proposal would not ensure safe and healthy living conditions. As such, the balance encouraged in Paragraph 119, Framework would not be appropriately struck. This harm attracts substantial weight.
41. The site is outside the built up area boundary, which results in fundamental conflict with the development plan on a matter of principle. Policies that rely on the boundary to conclude that the proposal is unacceptable in principle (C SP1, Local Plan and EH1, Neighbourhood Plan) are afforded limited weight given the housing supply context, to the extent to which they attempt to do this.
42. The need to recognise the intrinsic character and beauty of the countryside in Policy C SP1, Local Plan is consistent with Paragraph 174, Framework. Nevertheless, the effects on character and appearance arising from the proposal are such that this harm attracts only moderate weight.
43. Whether the site is a sustainable location for residential development when regard is paid to access to services is not a reason for refusal. However, the Council do address this matter when considering the presumption. I have paid regard to the appeal decisions referred to by the Appellant in evidence⁴ and noted the location of local services. The likely outcome would be an element of car dependence. However, I also acknowledge that access to facilities and the availability of transport solutions varies between urban and rural areas. Weighing the issue up, I have treated it as limited adverse in the balance.
44. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs. This proposal would not meet the needs of the future occupiers because it would fail to provide acceptable living conditions when regard is paid to noise. The effects could harm both health and well-being, and my overall conclusions on future living conditions is such that the benefits of housing become much reduced as a consequence.
45. As such, the adverse effects of granting planning permission substantially and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
46. For the reasons set out above, I conclude that the appeal should be dismissed.

D R McCreery

INSPECTOR

⁴ App/C3810/W/18/3209249, APP/C3810/W/19/3241407