



Appeal Decision

Site visit made on 20 February 2024

by D M Young JP BSc(Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 22 April 2024

Appeal Ref: APP/C3810/W/23/3329367

The Old Coal Yard, North End Road, Yapton, West Sussex, BN18 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr O Christiansen on behalf of Sussex Design and Development Ltd against the decision of Arun District Council.
 - The application Ref is Y/41/23/PL.
 - The development proposed is the erection of four dwellings with associated landscaping, access and parking.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of four dwellings with associated landscaping, access and parking at The Old Coal Yard, Yapton, BN18 0DN in accordance with the terms of the application, Ref Y/41/23/PL, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the development upon the character and appearance of the area.

Reasons

Principle of Development

3. The appeal site is located outside the Built-Up Area Boundary for Yapton and is therefore in the countryside for planning purposes. The second iteration of the Yapton Neighbourhood Development Plan (YNDP) was made in November 2023. The Council's Appeal Statement provides a policy update and highlights changes to Policies BB1 and H1 since the application was refused.
4. YNDP Policy BB1 states among other things that development outside the built-up area boundary will not be supported unless they accord with Policy C SP1 of the Arup Local Plan (LP). LP Policy C SP1 restricts development in the countryside unless it meets one of the six exceptions set out in a-f. There is no suggestion that the appeal scheme would meet any of these exceptions and therefore it conflicts with YNDP Policy BB1 and LP Policy C SP1.

Character and appearance

5. The appeal site is a brownfield, infill plot within a ribbon of residential development that extends northwards away from Yapton village centre. The site is currently being used for the storage of modular buildings. As to whether this is a lawful use, the evidence is unclear. While the Council states it is investigating, there is no indication that it has commenced enforcement

proceedings. In its current condition the appeal site clearly has a detractive influence on the street scene. Photographs taken prior to the commencement of the storage use provided by the Appellant, show a cleared site, laid to hardstanding and devoid of any landscape features. It is clear to me that the current and previous use and appearance of the appeal site is very different to that in the Sunnymead case which the Council has referred me to.

6. I appreciate there are some sections of undeveloped road frontage to the south but overall, the locality did not strike me as having a strong rural character. The proximity of established housing to the east, south and north together with the level crossing and new housing estates to the south lend the area a pleasant but nonetheless urban fringe character. This contrasts markedly with the area immediately north of the level crossing which is unmistakably rural.
7. There are a wide range of building styles in the area. While there are some attractive historic properties on the eastern side of North End Road, there is also a prevalence of higher density, post-war housing to the south. This is not therefore an area that has a particularly sensitive or uniform street scene.
8. Against my assessment above, I can see nothing untoward about the design of the proposed dwellings. While I acknowledge they would be set further forward and perhaps slightly more prominent than the houses to the south, the street scene plan demonstrates the development would respect the siting, orientation, and massing of neighbouring development. The dwellings would address the road in the traditional way, albeit set-back generously from it. A sensitive landscaping scheme to the site frontage would assist in softening the appearance of the dwellings.
9. Consequently, I am satisfied that the proposed development would not harm the character and appearance of the area. On the contrary, given the current use and appearance of the site, the appeal scheme would result in significant visual betterment. To that extent the appeal scheme would accord with LP Policies D SP1, D DM1 and LAN DM1. Among other things these seek high quality design that makes efficient use of land and reflects the characteristics of the site and local distinctiveness.
10. In coming to the above conclusion, I have noted references to other appeal decisions in the area. However, from the limited details before me, it appears that the location and context of these sites is materially different to the appeal site in this case. I have therefore assessed the current scheme on its individual merits.

Planning Balance

11. I am required to determine this proposal in accordance with the development plan, unless material considerations indicate otherwise, the starting point is therefore the development plan. In this case there would be conflict with LP Policy C SP1 and YNDP Policy BB1. However, in my view, it is not sufficient simply for a proposal to be in conflict with the wording of a development plan policy for it to be necessarily objectionable. For example, if there would be no actual manifestation of harm then there would be no sensible purpose served by rejecting a development.
12. In this case the aims and strategic objectives of Policy C SP1 is to "*protect and enhance Arun's outstanding landscape, countryside*" and to reinforce "*local*

character and identity". Given I have found an absence of harm and indeed some betterment to the character and appearance of the area, it follows that there would be no conflict with these objectives. No other harm or policy conflict has been alleged by the Council.

13. Other benefits of the scheme include the provision of four new dwellings in an area of need. This is consistent with LP Policy SP1 which seeks to ensure the supply of housing meets the Council's requirement. Condition 3 would secure biodiversity improvements consistent with LP Policies ENV DM4, DM5 and SP1. The appeal site is located close to existing bus stops and therefore the proposal would accord with Policy T DM1. The above benefits are consistent with the National Planning Policy Framework's (the Framework) definition of sustainable development which is adopted by LP Policy SD SP1.
14. The Courts have recognised that it is not unusual for development plan policies to pull in different directions, and that there may be some points in a plan which support a proposal but there may be some considerations pointing in the opposite direction. The Courts have established that a decision-maker may need to decide which is the dominant policy, and to address matters of relevance and weight. It will be necessary to assess all relevant matters and then decide whether there is accord between the proposal and the plan as a whole. It does not follow that if there is a breach of any one policy a proposal cannot be said to accord.
15. In this case there would be conflict with the wording of policies LP Policy C SP1 and by extension YNDP Policy BB1 but not the objectives supporting them. Accordingly, I give reduced weight to these conflicts. When read as a whole, I find the preponderance of development plan policy to be in support of the appeal scheme. It would therefore be sustainable development benefitting from the 'presumption in favour' contained in LP Policy SD SP1. Given I have not applied or relied on the tilted balance in paragraph 11d) of the Framework¹, paragraph 14 of the same has little relevance to my decision. I therefore conclude that the proposal should be allowed, subject to the imposition of a number of conditions set out below.

Conditions

16. The Council suggested a total of 20 planning conditions. The Appellant objected to the imposition of conditions 4 (energy efficiency) and 15 (electric vehicles charging points) on the basis that these requirements are covered by separate statutory processes namely the Building Regulations regime. I concur and find that these conditions would not meet the test of necessity.
17. Those conditions suggested by the Council covering time limits and the approved plans are necessary to provide certainty. To ensure net gains to biodiversity I have imposed a condition to ensure the development is developed in accordance with the ecological appraisal. Given the mitigation and enhancement set out in the aforementioned report together with the current ecological condition of the site, I am not persuaded that a separate Biodiversity Enhancement Strategy is necessary to make the development acceptable.

¹ The Council wrote to the Inspectorate on 5 Feb 2024 to inform that Housing Land Supply in the district had increased to 4.17 years.

18. A condition relating to working hours is necessary to protect the living conditions of local residents. A drainage condition is necessary to ensure the development does not add to flooding problems in the area. A contaminated land condition is necessary to ensure the land is suitable for its intended use. A noise attenuation scheme is necessary to protect the living conditions of future residents.
19. A condition relating to external lighting is necessary to ensure the development does not harm bats. I have however amended the wording suggested by the Council so that the condition is tied to the Ecological Appraisal submitted with the application and is proportionate in light of the appraisal's findings in relation to bats.
20. Conditions relating to the provision of high-speed broadband, water efficiency, cycle parking are necessary to ensure compliance with the Council's objectives in these areas. To ensure that adequate off-street parking is provided at all times, I have imposed conditions relating to the retention of the parking areas and the construction phase to ensure the development does not lead to overspill parking on North End Road. Finally, to protect the privacy of future residents I have imposed a condition relating to the obscure glazing of the en-suite bathroom windows. However, the obscure glazing of the non-habitable stairwell windows is unnecessary.

Conclusion

21. For the reasons given above the appeal should be allowed.

D. M. Young

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans 1209-P01 Rev A, 1209 Rev P02, 1209 Rev P03, 1209 Rev P04, 1209 Rev P05, 12505/2201 Rev P1; and 12505/2200 Rev P1.
- 3) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Appraisal Report by Wychwood Environmental Ltd (March 2023) as already submitted with the planning application and agreed in principle with the local planning authority prior to determination. This shall include the appointment of an appropriately competent person e.g., an ecological clerk of works to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 4) No demolition/construction activities shall take place other than from 08:00 hours until 18:00 hours (Monday to Friday) and from 08:00 hours until 13:00 hours (Saturday) with no work on Sunday or Bank/Public Holidays.
- 5) Development shall not commence, other than works of site survey and investigation, until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Design considerations must take full account of the 'Supplementary Requirements for Surface Water Drainage Proposals' produced by Arun District Council and are an overriding factor in terms of requirements. Winter groundwater monitoring to establish highest annual ground water levels and winter percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage. No building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order in perpetuity.
- 6) Prior to commencement of the development hereby approved (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:
 1. A 'Preliminary Risk Assessment' which has identified: all previous (historical) uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways, and receptors; and potentially unacceptable risks arising from contamination at the site.
 2. A 'Site Investigation Scheme', based on (1) above to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. Based on the 'Site Investigation Scheme' and the detailed risk assessment (2), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A 'Verification Plan' providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action.

Any changes to these parts, (1) to (4) require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved above and, prior to occupation of any dwelling or part of the site (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a Verification Report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of that remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved Verification Plan to demonstrate that the site remediation criteria have been met. The report shall also include a 'long-term monitoring and maintenance plan' for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action, as identified in the Verification Plan, and for the reporting of this in writing to the Local Planning Authority.

- 7) No development above damp-proof course level shall take place until there has been submitted to, and approved by, the Local Planning Authority, a landscaping scheme including details of hard and soft landscaping and details of existing trees and hedgerows to be retained, together with measures for their protection during the course of the development. The approved details of the landscaping shall be carried out in the first planting and seeding season, following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 8) No development above damp-proof course level shall take place until details of all walls and fences have been submitted to and approved by the Local Planning Authority and no dwellings/buildings shall be occupied until such walls and fences associated with them and the whole site have been erected.
- 9) No development above damp-proof course level shall take place unless and until a detailed colour schedule of materials and finishes to be used for external walls (and roofs) of the proposed buildings have been submitted to and approved in writing by the Local Planning Authority and the materials so approved shall be used in the construction of the buildings.
- 10) Prior to any development above damp-proof course level, details of a scheme for protecting the proposed dwellings and other noise sensitive uses from external railway noise shall be submitted to and approved in

- writing by the local planning authority. The scheme shall achieve good acoustic standards. All noise mitigation measures shall be implemented in accordance with the agreed details and thereafter permanently retained.
- 11) Prior to the occupation of any part of the development, the applicant or developer shall ensure that infrastructure is implemented to allow for the provision of the highest available headline speed of broadband provision to future occupants of all of the development from a site-wide network provided as part of the initial highway works and in the construction of frontage thresholds to buildings that abut the highway. Unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure, the development of the site will continue in accordance with the approved strategy.
 - 12) Any external lighting shall adhere to the considerations set out in Guidance Note 08/18 Bats and Artificial Lighting (ILP, 2023) reproduced in Annex 3 to the Wychwood Environmental Ltd Ecological Appraisal Report.
 - 13) No individual dwelling hereby approved shall be occupied until the optional requirement for restricted water consumption in Part G of the Building Regulations as demonstrated through "The Water Efficiency Calculator for New Dwellings" has been complied with for that dwelling.
 - 14) No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details to be submitted to and approved in writing by the Local Planning Authority. The spaces so provided shall be retained in perpetuity.
 - 15) No part of the development shall be first occupied until the car parking has been constructed in accordance with the approved site plan. These spaces shall thereafter be retained at all times for their designated purpose.
 - 16) No development shall be commenced until details have been submitted to and approved in writing by the Local Planning Authority showing the site set up during construction. This shall include details for all temporary contractors' buildings, plant and stacks of materials, provision for the temporary parking of contractors' vehicles and the loading and unloading of vehicles associated with the implementation of this development. Such provision once approved and implemented shall be retained throughout the period of construction.
 - 17) The en-suite bathroom windows in the first-floor flank elevations of the buildings shall at all times be glazed with obscured glass and non-openable below 1.7m above finished floor level. This arrangement shall be permanently retained thereafter.