



Appeal Decision

Site visit made on 3 June 2024

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/L3815/W/23/3332093

The Sussex Brewery, 36 Main Road, Southbourne, West Sussex PO10 8AU

- 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 Punch Partnerships (PML) Ltd against the decision of Chichester District Council.
 - The application Ref is SB/22/01005/FUL.
 - The development proposed is described as the partial demolition, conversion, and alterations of the detached outbuilding adjacent to the public house to create a 3-bedroom chalet bungalow with associated parking and landscaping, utilising the existing vehicular and pedestrian access from Main Road.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The National Planning Policy Framework (the Framework) was updated in December 2023. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views. The revised version has been referenced in this decision.
3. Under provision of Section 106 of the Town and Country Planning Act 1990, the appellant has submitted a Unilateral Planning Obligation (the Obligations) during the appeal process. The Council has had opportunity to make comment on this and the appellant has responded to those comments. I have therefore considered it accordingly within this decision.

Main Issues

4. The main issues are whether the proposed development mitigates against its effect on the Chichester and Langstone Harbours Special Protection Area, and the Strategic Road Network and Local Highway Network.

Reasons

Chichester and Langstone Harbours Special Protection Area

5. The appeal site falls within the zone of influence for the Chichester and Langstone Special Protection Area (SPA), which forms part of the wider Solent European Protected Sites (EPS). Regulation 63 of the Conservation of Habitats and Species Regulations 2017 requires an appropriate assessment to ensure that the development would not adversely affect the integrity of the SPA and EPS.

6. Both the SPA and EPS qualify for such protection as they support populations of internationally rare bird species. These are susceptible to predation and disturbance and rely on the water habitats of both areas.
7. The additional dwelling proposed, whilst minimal on its own, would contribute to an increased population in combination with other plans, projects, and developments in the area. Given the proximity of the development to the SPA, it is likely that its contribution to the increase in population could lead to an increase in visitor and recreational pressure within the SPA. Equally a new dwelling would also, cumulatively, negatively impact the nutrient levels within the EPS which is impacted by overflow wastewater discharge from the wastewater treatment works the proposal would use.
8. Given the susceptibility and vulnerability of the qualifying features of the SPA and EPS to such uses, the development could adversely affect the integrity of the protected sites in combination with other projects.
9. However, both matters are long term issues for the Council, and it has mitigation strategies in place which would be appropriate for the proposal. This takes the form of a financial contribution towards schemes which would reduce the recreational disturbance of the SPA, and, in the form of an off-site mitigation scheme at Droke Farm, the purchase of credits to offset the additional nutrient output from the proposal which would impact the EPS.
10. From the information before me I am satisfied that such contributions would be necessary to make the development acceptable in planning terms; and are fairly and reasonably related in scale and kind to the development. It follows that the submitted Obligations could secure the sufficient mitigation for the recreational disturbance of the SPA.
11. It is acknowledged that within the officer report it is stated that the appellant has already purchased the necessary Droke Farm credits. However, this is not supported by the appellant's statement of case which at paragraph 4.84 infers that a contribution relating to nutrient output mitigation will be secured through a Section 106 Agreement or condition. Further there is no evidence of purchase before me, and it is noted the submitted Habitat Regulation Assessment, Screening Matrix, and Appropriate Assessment Statement (dated 14/04/2023) has been undertaken on the presumption credits will be purchased not that they have.
12. Therefore, there is no evidence the nutrient impact on the EPS has been mitigated against, nor is there any mechanism before me to secure such mitigation. The use of a condition has been proposed. Nevertheless, without the specific details relating to the credits to be purchased, beyond the name of the scheme, there is insufficient certainty or clarity to ensure the reasonable use of a condition, negatively worded or otherwise.
13. Consequently, the proposal would fail to mitigate against any detrimental effect on the SPA, as part of the EPS. Accordingly, it would not comply with Policy 50 of the Chichester Local Plan (LP) as far as it seeks to protect the birds of the SPA from development disturbance.

Strategic Road Network and Local Highway Network

14. The proposal is for a net increase of 1 dwelling and therefore its impact on highway usage is likely to be minimal. Nevertheless, from the information

before me it is evident that there are significant issues in terms of road capacity, which in turn would affect highway safety and function, and could be detrimentally affected even by a small increase in usage. Thereby, cumulatively, it can be expected for the proposal to proportionally mitigate the additional impact it would have.

15. Policy 9 of the LP sets out the requirements for infrastructure provision related to all development. Criteria 2 of Policy 9 requires that all development provides, or funds new infrastructure, facilities or services required, both on- and off- site, as a consequence of the proposal. This in relation to highway function and promoting sustainable transport complies with the ethos of the Framework.
16. This requirement has been carried on within the emerging Chichester Local Plan 2021-2039 (eLP) Policy I1, amongst other things. Policies T1 and T2 of the eLP also set out when development contributions are required, and the Council confirm that the Draft A27 Chichester Bypass Mitigation Supplementary Planning Document (dSPD) sets out the specifics of how the contribution should be calculated.
17. The Council have relied on the eLP policies and the dSPD to specify the need for the appellant to make contributions towards the Strategic Road Network (SRN) and Local Highway Network (LHN). Whereas the appellant considers the Council's reliance on these policies as premature, referring to appeal APP/L3815/W/23/3319434.
18. Within that appeal the Inspector determined that the eLP was not far enough advanced and along with the evidence supporting it, including the dSPD, had not been formally tested or examined. Nor did they consider the contributions outlined in the dSPD would meet the necessary tests under regulation 122¹. I am minded to agree with the Inspectors conclusions, as from the information before me the policy position including the stages the eLP and dSPD are at, have not advanced since decision 3319434 was issued.
19. In 3319434 it was determined that the evidence submitted provided adequate certainty that the contribution values and associated highway projects would meet the regulation 122 tests. However, in this instance no such evidence has been presented and therefore, through the lens of LP Policy 9, I am unable to conclude that the values within the submitted Obligations would meet the same tests.
20. Consequently, by failing to secure appropriate mitigation the proposed development would fail to comply with LP Policy L9. Nevertheless, even if I were able to find that highway contributions set out in the Obligations were adequate, this would not overcome my findings in the first main issue.

Other Matters

21. It is noted that the appeal site is also considered to be within the setting of a grade II listed building, the Sussex Brewery Public House. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving listed buildings, or their settings, or any features of special architectural or historic interest which they possess. The significance of the listed building is principally in its architectural

¹ From the Community Infrastructure Levy Regulations 2010

quality and historic use as a public house. The appeal site constitutes a 1970s building² on the opposite side of a large modern car park to the listed building. Therefore, the appeal site is physically and visually separate from the listed building. Consequently, I am satisfied the proposal would not impact on the setting of the listed building nor its significance.

22. The appeal site is also within the Chichester Harbour National Landscape (NL). NLS are designated for the purposes of conserving and enhancing natural beauty. Section 85(1) of the Countryside and Rights of Way Act 2000 places a duty upon me to have regard to these purposes in this decision. The Council did not object to the appeal scheme in this regard and I agree that due to the scale, design, and siting of the proposed development within a village context, the special qualities of the NL would not be adversely affected.
23. The Council has confirmed that the Southbourne Parish Neighbourhood Plan Review has been made so should now be considered a material consideration. Nevertheless, this does not alter my findings.
24. It is noted that there is dispute between the main parties as to whether the Obligations would constitute a unilateral agreement or a section and whether indexation clauses are needed. However, as I have found in the main issues that the Obligations do not fundamentally cover all the relevant requirements it is not necessary to consider if it is legally binding or deliverable.

Balance and Conclusion

25. The Framework seeks to boost the supply of homes and make more efficient use of land in accessible locations. The proposal would provide a net increase of 1 home on previously developed land in a reasonably accessible location. However, this contribution to the windfall element of the Council's five-year housing land supply attracts only limited weight based on the number of houses involved.
26. That the proposal would not harm the setting of the listed building, the NL, the living conditions of future or nearby residents, any on site ecology including protected species, and drainage would be considered neutral matters. These do not therefore weigh for or against the proposed development.
27. However, housing provision should not come at the cost of the quality of the EPS or highway safety and function, a position supported by the Framework. Consequently, when weighed against the policies in the Framework taken as a whole, I find that the adverse impacts of granting planning permission would outweigh the proposed benefits.
28. For the reasons given above the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR

² As identified by the Council's heritage officer