

Appeal Decision

Site visit made on 20 February 2024

by **H Heward BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/Z3825/W/23/3323709

Hunters Oak, Faygate Lane, Faygate, Horsham

- 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 Keith Luxford against the decision of Horsham District Council.
 - The application Ref DC/22/1775 was refused by notice dated 19 December 2022.
 - The development proposed is the demolition of existing residential and light industrial buildings and erection of 28 no. 2, 3, 4 and 5 bedroom dwellings with associated access road and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved except for access and layout which are to be considered at this stage. I have determined the appeal on this basis.
3. The wording of Reason for Refusal omits the word “affordable” at the end of line 1 and before the word “housing”. Reason 7 is otherwise clear that it relates to affordable housing. The Appellant addressed Horsham District Planning Framework (2015) (HDPF) Policy 16 and affordable housing. I do not consider that any party has been prejudiced by this minor error.
4. The Local Planning Authority (LPA) and the Appellant were consulted on amendments made in a revised version of the National Planning Policy Framework (Framework) published 19 December 2023.
5. Paragraph 76 of the 19 December 2023 Framework provides that Local Planning Authorities will not have to continually demonstrate a deliverable five-year housing land supply (HLS) providing their adopted plan is less than five years old, and it identifies at least a five-year supply of specific, deliverable sites at the time that its examination concluded. The HDPF is more than five years old.
6. Paragraphs 77 and 226 include provisions that in some circumstances authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 are required only to identify and

supply a four-year HLS. The Officer Report states that the LPA can only demonstrate a 4.0-year HLS. It also states that the Horsham District Local Plan (emerging Local Plan) has reached the Regulation 18 stage.

7. When consulted on the 19 December 2023 revisions to the Framework, the LPA chose not to make submissions. Therefore, I have determined the appeal on the LPA's statement of case which acknowledges that the LPA cannot demonstrate a five-year HLS and that the presumption in favour of sustainable development is engaged.
8. Paragraph 11 (d) of the Framework states that applying the presumption in favour of sustainable development means granting planning permission where the policies of the development plan which are most important for determining the application are out-of-date¹ unless (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Main Issues

9. The main issues are:
 - i) whether or not the proposed development would provide a suitable location for housing, and
 - ii) the effect of the proposal on areas or sites of particular importance.

Reasons

Suitability of the Location

10. The appeal site is situated within Faygate to the north of Durrants Village retirement development. Faygate is a small settlement in the countryside between Horsham and Crawley, close to the A264. The Officer Report notes that Faygate has a Village Store, a small convenience shop developed as part of Durrants Village. Faygate train station is around 200m south of the appeal site. There is also a public house, and a petrol filling-station and convenience store at the Faygate Roundabout approximately 620m to the south.
11. The appeal site adjoins residential development. Durrants Village is a substantial development with various apartment blocks, other dwellings and communal facilities. It forms a built-up edge adjacent to the south and southwest boundaries of the appeal site.
12. HDPF Policy 2 provides a spatial strategy intended to maintain the district's unique rural character whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services and local employment. It focuses development in and around Horsham with growth in the rest of the district directed in accordance with the settlement hierarchy.
13. Policy 3 sets out that development will be permitted in towns and villages which have defined built-up areas. Outside of built-up area boundaries, Policy 4 outlines

¹ and this includes situations where the LPA cannot demonstrate a five-year HLS.

that the expansion of settlements will be supported subject to criteria including that the site is allocated in the HDPF or in a Neighbourhood Plan and adjoins an existing settlement edge. Faygate does not have a defined built-up edge, nor is the appeal site allocated for development.

14. Policy 26 relates to development in the countryside and includes a requirement that any proposal for development outside of built-up area boundaries must be essential to its countryside location.
15. In October 2022 the LPA published 'Facilitating Appropriate Development'. In it the LPA recognises that it is unable to demonstrate a five-year HLS and that the relevant policies of the HDPF are unlikely to be sufficient to justify refusals. Paragraph 5.7 explains that given this position and the principles behind HDPF Policy 4, the LPA will consider positively applications that meet five criteria. The first criterion is that the site adjoins an existing defined built-up area edge. Although this document does not form part of the development plan, it is a material consideration to which I attach some weight.
16. The location of the proposed development within the countryside would be contrary to the spatial strategy, and would conflict with Policies 2, 3, 4 and 26 of the HDPF and the Facilitating Appropriate Development document. However, given the absence of a five-year HLS these policies may be considered out-of-date, and the conflict attracts very limited weight.
17. The Officer Report noted that Policy 2 to the emerging Local Plan designates additional 'secondary' settlements to those identified within Policy 3, and provides that development will be supported, in principle, within designated secondary settlements. Faygate is defined as a secondary settlement and the appeal site would fall partially within a draft settlement boundary. However, the emerging Local Plan is not yet approved and attracts little weight.
18. I find that the appeal site contains a mix of residential and commercial/industrial uses. The proposal would deliver 28 dwellings, which would make a modest but important contribution to the housing supply. Although not adjoining a defined built-up area edge it would adjoin the existing built-up edge of a large retirement village on the edge of Faygate. Future occupiers of the proposed development would have access to the local services and facilities as well as nearby public transport links.
19. I conclude that these are material considerations which mean that the appeal site would provide a suitable location for housing. The benefit of the additional housing attracts very significant positive weight and would outweigh the limited negative weight that conflict with Policies 2, 3, 4 and 26 of the HDPF, and paragraph 5.7 of the Facilitating Appropriate Development document attract.
20. But that is not an end to the matter because Framework paragraph 11(d) (i) when read together with Footnote (7) explains that the presumption in favour of sustainable development does not apply where the application of policies in the Framework that protect areas or assets of particular importance relating to habitat sites and irreplaceable habitats provide a clear reason for refusing the development proposed.

Areas or Assets of Particular Importance

21. Framework paragraph 180 (a) requires that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan).
22. Framework Paragraph 186 (a) states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
23. Paragraph 186 (c) advises that proposals for new development resulting in the loss or deterioration of ancient woodlands or irreplaceable habitat(s) will not be permitted unless there are wholly exceptional reasons, and a suitable compensation strategy exists. Ancient woodland is defined as irreplaceable habitat at Annex 2.
24. HDPF Policy 25 seeks to maintain and enhance the existing network of geological sites and biodiversity, including safeguarding existing designated sites and species, and ensure no net loss of wider biodiversity and provide net gains in biodiversity where possible. Policy 31 4. b) requires that where development is anticipated to have a direct or indirect adverse impact on sites or features for biodiversity, development will be refused unless it can be demonstrated that the reason for the development clearly outweighs the need to protect the value of the site and appropriate mitigation and compensation measures are provided.

Water Abstraction and Habitat Sites

25. The appeal site lies within the Sussex North Water Supply Zone where Natural England advise that groundwater abstraction supplying the public mains-network may be adversely affecting the integrity of the Arun Valley Special Area of Conservation (SAC) Special Protection Area (SPA) and Ramsar sites. These important protected sites are subject to the Conservation of Habitats and Species Regulations 2017 (as amended).
26. The SPA is classified for its wintering birds including Bewick Swan, its assemblage of wintering wildfowl and the supporting wetland habitats. The SAC is notified for little whirlpool ram's horn snail and supporting wetland habitats. The Ramsar Site is listed for wintering birds, rare invertebrates, rare aquatic and wetland plants, and supporting wetland habitats.
27. There are two properties on the appeal site and other commercial/industrial uses/activities on the site will have water demands. Even so, occupation of the proposed 28 dwellings could increase demand for water abstraction. This creates a pathway for potential effects on the designated features of these important sites.
28. HDPF Policy 31 requires, amongst other things, that any development with the potential to impact the Arun Valley SPA will be subject to a HRA to determine the need for an Appropriate Assessment. Section 70 (3) of the Conservation of Habitats and Species Regulations (2017) states that where the assessment provisions apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely to adversely affect the integrity of a European site or a

European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.

29. At the application stage Natural England advised that it was not possible to ascertain that the proposal would not result in adverse effects on the integrity of the Arun Valley SAC, SPA and Ramsar sites. Natural England advised that planning permission should not be granted. At appeal, there remains insufficient evidence about the mains-water demand of existing uses and anticipated mains-water demand associated with the proposed 28 dwellings, including if effects could be appropriately mitigated, or whether any alternative solutions would have a lesser effect on the features of the habitat's sites, or could be compensated.
30. Having regard to the Habitats Regulations and adopting a precautionary approach. I am unable to conclude with a very high level of certainty that the development would protect the SAC, SPA and Ramsar sites in a manner commensurate with their statutory status. Nor can I be satisfied that planning conditions could ensure such an outcome. The potential for significant harm exists.

Ancient Woodland

31. The site contains many trees. The Durrants Copse Ancient Woodland occupies part of the appeal site and extends beyond it. Submitted drawings No's 20-23-14 and 20-23-15 indicate a layout which would require loss of trees and construction of dwellings within the designated ancient woodland.
32. The Appellant states that across the whole site most trees would be retained, especially around the perimeter, and that the impact on the ecosystem would be minimal. The Appellant argues that parts of the site amount to previously developed land and that the northern part of the site would be enhanced by removal of light industrial usage and articulated vehicles.
33. However, there is no substantial evidence to assess likely effects or net gain. Some of the trees and areas to which the Appellant refers are beyond the red line and within adjacent land, albeit within the control of the Appellant. Ancient woodland can be impacted in very many ways, not just through the loss of trees. For example, changes to ground conditions during and post construction, and changes in the amount and type of human activity within and close to ancient woodland.
34. The Government's Standing Advice for ancient woodland is unequivocal that planning permission should be refused if development will result in the loss or deterioration of ancient woodland unless there are wholly exceptional reasons and there's a suitable compensation strategy in place. It adds that where a proposal involves the loss or deterioration of ancient woodland, no account should be had of the existing condition of the ancient woodland when assessing the merits of the development proposal.
35. The proposed development would result in a loss of trees and would likely cause harm to the integrity and viability of existing habitats and biodiversity features of the Durrants Copse ancient woodland. Making efficient use of previously developed land and the benefit of the additional housing do not amount to wholly exceptional reasons for allowing the loss of ancient woodland. Moreover, no suitable compensation strategy is in place.

36. The Appellant argues that most of the reasons for refusal require additional detailed information which could be dealt with by conditions. However, the quantum of development and proposed layout are for determination now.
37. I conclude that the proposal conflicts with HDPF Policies 25 and 31 and policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development. The presumption in favour of development does not apply, and the appeal must fail.

Other Matters

Affordable Housing

38. Policy 16 requires the provision of affordable housing. Horsham Council's adopted Planning Obligations and Affordable Housing Supplementary Planning Document (2017) (Appendix E), paragraph 6.1.9, states that the Council will assess the viability of developments when applications depart from adopted policy, but that there is a general expectation of 35% affordable housing provision on qualifying sites (inclusive of the appeal proposal), unless the applicant can provide sound evidence that this cannot be achieved without making the scheme unviable.
39. Demolition site clearance and decontamination are normal development costs. For a Council to determine if the required provision of affordable housing would unreasonably impact a scheme's viability, an applicant must submit a viability assessment. However, I agree with the Appellant in so far as the provision of affordable housing to meet the requirements of Policy 16 could be dealt with by way of a planning condition.

Loss of Employment Site

40. Amongst other things Policy 9 requires that the redevelopment of employment sites and premises outside Key Employment Areas, must demonstrate that the site/premises is no longer needed and/or viable for employment use. The extent of the loss of industrial and employment use is not clear. The proposal would bring some economic activity associated with temporary construction employment, and a permanent demand for services after occupation could be expected. But there is insufficient evidence to assess this issue.

Safe Access

41. The proposal would use the same point of access as the existing uses. Existing traffic includes residential and commercial vehicles. A West Sussex County Highways consultation indicated that the required visibility splays were attainable, but the LPA considered there was a drafting error on the drawings in relation to a footpath and that it was not clear that sufficient visibility could be obtained. The application form ticks both layout and access as matters for determination at this stage, but the evidence relating to the junction design and internal accesses and layouts for larger vehicles including fire-tenders is limited and somewhat equivocal.

Flood Risk

42. A site-specific Flood Risk Assessment has not been submitted, contrary to requirements of HDPF Policy 38.1.d. The proposals fail to demonstrate that the proposals would incorporate satisfactory measures which reduce the risk of flooding and ensure flood risk is not increased elsewhere, contrary to requirements

of HDPF Policy 38 3. Drainage changes could also potentially impact the ancient woodland. It would not be appropriate to attach a planning condition requiring detailed information to be submitted at a later stage.

Design, Landscaping and Character and Appearance.

43. The LPA included reasons for refusal regarding the quality of design, respecting landscape features, retention of trees, and the character and appearance of the application site and its respective surroundings. However, detailed design and landscaping are reserved matters and given my conclusions in relation to ancient woodland it is not necessary to address these issues further in this decision.

Planning Balance

44. The proposal would conflict with Policies 2, 3, 4 and 26 of the HDPF and the Facilitating Appropriate Development document. But the LPA does not have an adequate supply of housing land. An additional 28 dwellings adjacent to a quite considerable built-up edge, in an accessible location and with access to services and facilities in Faygate would help address the housing shortfall. This benefit attracts significant weight in favour of the proposal and far outweighs the very limited weight that the conflict with these policies attracts.
45. However, I was unable to conclude with a very high level of certainty that the development would protect the SAC, SPA and Ramsar sites in a manner commensurate with their statutory status. I also found that the proposal would result in a loss of trees and likely cause harm to the integrity and viability of the Durrants Copse ancient woodland. The proposals are contrary to requirements of HDPF Policies 25 and 31. These harms attract substantial weight against the scheme.
46. Policies in the Framework that protect areas or assets of particular importance provide clear reasons for refusing the development proposed. The presumption in favour of sustainable development does not apply.
47. Despite finding a number of shortcomings in relation to other matters, given my conclusions on the main issues I found none of these to be determinative and attach no weight to them in the planning balance.
48. Therefore, notwithstanding the shortfall in housing supply and the significant weight I attach to the benefits of an additional 28 dwellings, the potential adverse effects of the development on designated areas and assets of particular importance are matters of overriding concern which provide clear reasons for refusing the appeal.

Conclusion

49. For the reasons given, and having regard to all other material considerations, including third party representations, I conclude that the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR