



Appeal Decision

Site visit made on 28 October 2024

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal Ref: APP/Y9507/W/24/3338957

The Vere, land north of junction of A29 and B2138, Bury Gate, Pulborough, West Sussex, RH20 1NL

- 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 Tim Hatcher, Bury Gate Residents Association, against the decision of the South Downs National Park Authority.
 - The application Ref is SDNP/22/05725/FUL.
 - The development proposed is construct (net zero) underground dwelling on agricultural land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For clarity in the banner heading above I have combined the descriptions of the site location as set out on the application form and on the Council's Decision Notice.
3. The site is in the South Downs National Park (the SDNP). A new duty under section 245 of the Levelling-up and Regeneration Act 2023 (the Act) requires all relevant authorities to "seek to further" the purposes of National Parks. For this appeal the most relevant of these is the first purpose which is to conserve and enhance its natural beauty, wildlife and cultural heritage. There is also a duty to foster the social and economic wellbeing of the local communities within the SDNP in pursuit of the purposes.
4. A revised National Planning Policy Framework (the Framework) was published in December 2023. Paragraph 80 of the previous Framework is Paragraph 84 in the latest version. The wording of the Paragraph is unchanged and so in this Decision I have made reference to the revised version.
5. Although not referred to on the Council's Decision Notice the Bury Neighbourhood Plan (the NP) was made in April 2018 and is referred to in some of the appeal documents. I have therefore taken it into account.

Main Issues

6. The main issues are the effect of the proposal on the integrity of protected sites with particular regard to groundwater abstraction; the effect on the character and appearance of the area; and whether or not the site is an appropriate location for a dwelling having particular regard to the spatial strategy and accessibility to goods and services.

Reasons

Protected sites

7. The Arun Valley Special Area of Conservation, Special Protection Area and Ramsar site (the Arun Valley Sites) are low-lying wetland areas that are protected for a variety of ecological conditions for over wintering birds, a rare snail species, invertebrates and several rare and uncommon aquatic and wetland plants. The appeal site is in the zone of influence of the Arun Valley Sites and is in the Sussex North Water Supply Zone (SNWSZ) which is served by ground water abstraction near Pulborough. Natural England¹ have advised that developments, alone or in combination with other developments, within the SNWSZ must not add to the impact of water abstraction on the Arun Valley Sites. As competent authority under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations) I must assess the Likely Significant Effects on the protected Arun Valley sites.
8. Achieving water neutrality in developments is recognised as a suitable method to rule out potential adverse effects on the integrity of the Arun Valley Sites arising from new developments. To do this Natural England advises that, for every new development, total water use in the region after the development must be equal to or less than the total water use in the region before the new development².
9. The evidence indicates there is an existing water supply pipe to the site which supplied animal troughs. However, the appellants have proposed a number of water supply options with the intention that, once built, the development would be wholly self-sufficient with regard to water requirements. These include rainwater collection; large underground water storage tanks; a humidity to water condenser as back up; a biodigester sewage treatment plant to recycle up to 99% of waste, the resultant cleaned water to be mixed with rainwater for blended grey water for managed irrigation; a water well borehole from the Hythe Formation³ subject to quality testing; and the use of water saving fixtures and fittings.
10. All these measures would undoubtedly be helpful in terms of water supply and management. However, it is not clear how much water would be required to serve the proposed four bedroom dwelling. Nor is it clear how long 3000 litres stored water would be likely to last; how much water would be made available from the condenser/water re-cycling; the quality of the borehole water, how much water would be required from it and whether or not there would be other environmental effects relating to water abstraction concerns; and what contingency plans would be put in place in the event that the intended water supply was insufficient to meet the needs of future occupiers.
11. A water budget which compares existing/historic water use with the water requirement for the new development has not been provided. Nor is there sufficient detail as to the actual amounts of water which could be generated by the various measures to meet the identified demand and how these could be secured into the future. Usually such information should all be drawn together

¹ Natural England's Position Statement for Applications within the Sussex North Water Supply Zone – September 2021 Interim Approach (Position Statement 2021) as amended

² Arun Valley and Water Neutrality - Frequently asked questions (FAQs) - Developers March 2022

³ Nicholls Borehole Water Well Prognosis Report November 2023

in a Water Neutrality Statement. Without this it is not possible to confidently conclude that the proposal would be self-sufficient in terms of water supply.

12. I need to take a precautionary approach in respect of the effects of the development on the Arun Valley Sites. There is not the supporting evidence which is precise, robust, and conclusive with no gaps, such as to provide sufficient certainty that the water abstraction impacts would, either alone or in combination with other schemes, not have a likely significant adverse effect on the integrity of the Arun Valley sites. I conclude that the proposal would not meet the legislative requirements of the Conservation of Habitats and Species Regulations 2017. Nor would the proposal comply with policies SD9, SD17 and SD48 of the South Downs Local Plan 2019 (the LP) or the similar principles of the Framework that seek to protect important habitats and reduce mains water consumption.

Character and appearance

13. The National Park designation affords the area the highest status of protection in landscape terms. Paragraph 182 of the Framework requires great weight to be given to conserving landscape and scenic beauty in such areas.
14. The appeal site is a triangular area of land bounded by the A29, the B2138 and a single lane relief road between the two on the north west side. There is a gated access to the site from this slip road. The site boundaries are predominantly native hedgerows with some gaps and some trees although many ash have been removed due to ash die-back disease.
15. In the past the site was ear-marked for a roundabout but other highway improvements were carried out instead. There has been a history of unauthorised use on at least part of the site. In 2016 enforcement action was undertaken and an appeal for change of use from agricultural land to a gypsy and traveller site was dismissed⁴. Those appeals were considered against different development plan policies before the LP was adopted. Subsequently a group of neighbours bought the land.
16. The site contains a timber building and an area of hardstanding inside the gate; the remainder of the land is an overgrown field. The site slopes to the south by between some 4.5m to 2m with the lowest part to the south west.
17. There are houses in large gardens along the A29 to the east, the B2138 to the north west and a day nursery to the south. The property on the opposite side of the A29 is enclosed by a substantial close boarded fence. Directly across the slip road and to the west is mainly agricultural land.
18. The site is within the Mixed Farmland and Woodland Vales landscape type and the Rother Valley Mixed Farmland and Woodland Vales Landscape Character Area as defined in the South Downs Integrated Landscape Character Assessment. The key characteristics of these Areas includes a gently undulating landform, mixed farmland and deciduous woodland copses, its remote and marginal character, relative tranquillity, thick hedgerows providing a sense of enclosure and its low lying landscape which provides a convenient transport corridor containing main roads. The settlement pattern is characterised by a high density of dispersed settlement with scattered hamlets and isolated farmsteads and some larger settlements.

⁴ APP/Y9507/C/15/3132202 and 3019486

19. The Character Assessment finds that visual sensitivity of the landscape is limited by the high proportion of tree cover and high hedges although the visibility from the adjacent scarps and downs increases its visual sensitivity.
20. Overall management objectives are to conserve the lush pastoral character of the area, the intact medieval landscape and a rural setting to hamlets and villages. This requires conserving and managing the network of thick hedgerows, integrating development on the edge of villages through native planting and resisting the effects of suburban style garden boundaries.
21. A great deal of thought has gone into the design of the proposed partially underground ground-hugging dwelling which would be covered by soft sweeping lines of an earth mound sown with grass. The mound would be shaped to emulate a grass meadow and to guide wind towards low vertical access wind turbines as well as minimising traffic noise within the dwelling.
22. However, the submitted plans lack a detailed depiction of the site as it is now and as it would appear after the proposed development. Without more detailed topographical information, including existing and proposed cross sections showing levels across the site in relation to the surrounding roads, the four different internal floor levels and all the proposed structures such as wind turbines and solar panels, it is difficult to confidently conclude that the proposed development would not appear as an over-engineered intrusive feature in the landscape.
23. The proposed dwelling would be in the form of a central circular section with two radial 'wings' open mainly to the south. It would be built only partially underground and the bulk of the structure earth-covered southern side of the building would be fully exposed towards its maximum source of sunlight. Whilst this elevation would be partially concealed behind extensive wide hedging good design does not need to overly rely on screening.
24. There is already some mixed species hedges around the site although these are in need of management. The provision of thick hedging and tree planting to supplement them would meet the management objectives of the SDNP. However, whilst it might be a most efficient species in terms of high carbon absorption, a long, high hedge comprising predominantly cotoneaster franchetti on a main through route would appear as an alien feature rather than the native planting envisaged by the SDNP objectives. Overall the species proposed on the plans would not follow the recommendations of the submitted Preliminary Ecological Appraisal that new planting should include native species.
25. Similarly Cupressus sempervirens, whilst not an unattractive tree in itself, has a narrow columnar habit which would appear as alien geometric feature in the more native naturalistic environment which is valued in the SDNP. Such planting would emphasise the proposed access and turning area which would be extensive, formalised and over dominated by the stone retaining walls. More sympathetic naturalistic planting with reduced hard surfacing in less regular form would be more in keeping with the rural location and help to reduce the intrusiveness of the proposal when viewed from the relief road.
26. In my judgement for the above reasons the proposal does not take a sufficiently landscape led approach as envisaged in the LP.

27. I acknowledge that more distance views towards the site would be likely to be relatively limited given the intervening land forms, trees and hedges. Accordingly the impact of the proposal is likely to be very localised and predominantly limited to short stretches of highway nearest to the site. However, the submitted Landscape Appraisal/Study is lacking in rigorous analysis and does not provide the before and after viewpoints that would usually accompany a proposal for new development in the SDNP.
28. The site is within the Dark Sky Core described as intrinsically dark. However, lights from vehicles along the A29 and the B2138 already interrupt dark skies and considerably disturbs local tranquillity. External lighting could be controlled by condition. Taking this into account I do not find the development of one dwelling on this particular site would be significantly harmful to the tranquillity or dark skies of the area. Similarly other domestic activities would not be noticeably more intrusive than those associated with existing houses and the day nursery.
29. The intention is to make the dwelling zero carbon and self-sufficient in energy whilst avoiding obtrusive equipment. The proposals include a circular roof of solar panels inset in the earth mound; a sand/stone battery (heat vault) storage system; a bank of solar panels; wind turbines; high carbon absorption hedging; the use of sustainable and low carbon construction materials, triple glazed solar PV glass and high efficiency white goods. In due course it may well be that these measures together would result in an exemplar zero carbon and energy self-sufficient development that could be expanded to groups of dwellings and help raise design standards in rural areas.
30. Taking all the above into account I conclude that the proposal has the potential to amount to a design of exceptional quality and to be sensitive to its immediate setting and the defining characteristics of the area. Should this be demonstrated the proposal could garner significant support from Paragraph 84(e) of the Framework.
31. However, as submitted the proposal is lacking in the evidence to demonstrate that the very high bar of being truly outstanding and reflecting the highest standards in architecture would be reached. Moreover as set out above I cannot conclude that the proposal has been sufficiently landscape led in terms of the natural characteristics of the local area. For these reasons I find conflict with Policies SD4, SD5, SD7 and SD8 of the LP; Policies BNPD 2 and BNPD 13 of the NP; those principles of the Framework and the duty under the Act that seek to conserve and enhance the local area and the natural beauty, wildlife and cultural heritage of the SDNP.

Spatial strategy

32. The site is severed from agricultural land and is likely to be too small to be viable independently. The Framework makes it clear in Paragraph 84 that isolated homes should be avoided unless one of a number of specified circumstances applies. The site is some distance from any settlement boundary where development will be supported under Policy SD25 of the LP. Policy SD25 does provide for development outside settlement boundaries in exceptional circumstances but none of these directly apply in this case.
33. The nearest settlements identified in the LP as being suitable for development are Coldwaltham and Bury some 1.5Km and 1.9km away. There is a footpath

along the A29 part of which directly adjoins the appeal site but more of which is on the other side of the A29. This leads to the small hamlet of Watersfield some 750m away. A new pedestrian gate would be added to join the pavement to improve pedestrian access and there are some buses along the A29.

However, these are relatively infrequent and bus stops are some distance away. Moreover, the busy nature of the A29 makes it relatively unattractive for cycling. Accordingly future residents would be likely to rely on the private vehicle for access to most day to day services.

34. Paragraph 109 of the Framework recognises that opportunities to maximise sustainable transport solutions vary between rural and urban areas. Moreover, the Highway Authority concludes that the harm arising from one dwelling in this location would not result in a severe impact that would warrant refusal in highway terms.
35. In addition, the site is within the Bury Gate ribbon developments which spread along the A29 and the B2138 and future residents could well take part in the local community of the Bury Gate Residents Association. It has been held that a settlement would not necessarily exclude a hamlet or a cluster of dwellings⁵. There is also a day nursery directly across the B2138 so in my judgement the site is not so physically separate or remote from a settlement as to warrant refusal of the principle of one dwelling.
36. The LP sets out that one of the special qualities of the SDNP is its distinctive towns and villages, and communities with real pride in their area. In my view the co-operative approach to the future of the site, together with the extensive support of local residents and of Bury Parish Council, demonstrates a real pride in the area. This is a material consideration of significant weight.
37. For the reasons set out above I conclude that the proposal would conflict with Policies SD1, SD19, and SD25 of the LP in terms of the spatial strategy and accessibility to goods and services by means other than the private vehicle. However, this is tempered by the above material considerations so the conflict is relatively limited.

Other Matters

38. The appeal site lies within the 12km buffers of the Ebernoe Common and The Mens SAC. It also lies within a bat home and movement network and it is likely that the site is used as part of wider commuting and foraging routes. With appropriate planting and lighting the impact of the proposal on bats could be managed to an appropriate level.
39. I acknowledge that time of the essence in planning to construct an underground dwelling in best weather conditions. The appellant has expressed dissatisfaction with the approach which the SDNP Authority and Hampshire County Council have taken to the application. It is not clear why the Design Review Panel did not wish to engage with the scheme. However, these matters do not affect the material planning considerations of the appeal before me. I have reached my own conclusions based on the evidence and the planning merits of the case.

⁵ Braintree District Council v Secretary of State for Communities and Local Government [2018] EWCA Civ 610, [2018] 2 P. & C.R. 9 and City & Country Bramshill Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 320.

Planning Balance

40. There is not the supporting evidence to provide sufficient certainty that the water abstraction impacts would, either alone or in combination with other schemes, not have a likely significant adverse effect on the integrity of the Arun Valley sites. The proposal is also lacking in the evidence to demonstrate that the proposal would not harm the character and appearance of the area and the SDNP or to meet the very high bar of being truly outstanding and reflecting the highest standards in architecture. Accordingly the proposal, as it stands, would not attract support from Paragraph 84(e) of the Framework and would fail to conserve the natural beauty, wildlife and cultural heritage of the SDNP. The design as submitted has not been sufficiently landscape led. The spatial strategy would not support a dwelling in this location and access to most day to day facilities would rely on the private vehicle. In these respects the proposal conflicts with the development plan taken as a whole.
41. However, the proposal would bring certainty to the future use of the site. It could be developed relatively quickly. It would make good use of a piece of land severed from other agricultural land. It would add in a small way to the supply of houses in the local area and have some economic benefits from employment during construction and spend in the local economy. Future residents would add support the local residents community. These benefits weigh substantially in favour of the proposal.

Conclusion

42. The scheme would not comply with the development plan when considered as a whole. Whilst the collective benefits are substantial these are insufficient material considerations to indicate that a decision should be made other than in accordance with the development plan. The appeal should be dismissed.

S Harley

INSPECTOR