
Appeal Decision

Site visit made on 3 October 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2024

Appeal Ref: APP/C3810/W/23/3335883

Land to rear of Karenza, Hook Lane, Aldingbourne, West Sussex PO20 3TB

- 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 E Rees of Domusea Developments Ltd against the decision of Arun District Council.
 - The application Ref is AL/154/23/PL.
 - The development proposed is construction of 5no. dwellings, landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for construction of 5no. dwellings, landscaping and associated works at Land to rear of Karenza, Hook Lane, Aldingbourne PO20 3TB in accordance with the terms of the application, Ref AL/154/23/PL, subject to the conditions set out in the schedule below.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration, the changes to the Framework can only be given limited weight at this stage, given that no final document has been published. In reaching my decision I have therefore had regard to the Framework published in December 2023, unless it is stated otherwise.
3. The description of development used above is taken from the application form and Council's decision notice. However, I have removed reference to the earlier application since this is not a description of development.

Background and Main Issue

4. The Council have commented that during the course of the appeal it has reached agreement with the appellant over the issues raised within all of the three reasons for which it refused planning permission. I have therefore considered the matters relating to the effects of the protected beech tree and site drainage under Other Matters, since these issues are no longer the main areas of dispute.
5. However, while the main parties are now in agreement on the matter of affordable housing, this issue is still substantially disputed by third parties. As such I have considered this as the main issue of the appeal. Accordingly, the

main issue is whether the proposal would make an appropriate contribution to affordable housing.

Reasons

6. The appeal site lies to the southern side of Autumn Gate, a recently completed development of homes which sits behind the rear gardens of properties on Hook Lane¹. The main part of the appeal site is predominantly open, comprising overgrown grass and shrubs as well as the remnants of some outbuildings. The most northern part of the appeal site, however, includes a strip of land which directly adjoins the road of Autumn Gate. This comprises well maintained grassland and young trees, and is separated from the remaining part of the appeal site by wooden post and rail fencing and hedging. I understand this part of the site formed an area approved for landscaping and ecological enhancements for the Autumn Gate scheme.
7. Policy AH SP2 of the Arun Local Plan 2018 (the LP) contains the Council's policy for affordable housing. It sets out that for all developments of 11 residential units or more the Council will require a minimum 30% of the total number of units proposed on site to be provided as affordable housing. It goes on to give provisions where a lesser amount, or an off-site contribution may be acceptable. The proposal therefore sits below the threshold for affordable housing set out in the development plan.
8. However, the matter in dispute is whether the appeal site should be aggregated with the Autumn Gate development for the purposes of triggering an affordable housing contribution. My attention has been drawn to the 2003 Brandlord case² which discussed a 'tripartite test' for considering whether a proposal constitutes phased development, and includes consideration of ownership, whether the site is a single planning unit and, whether the proposals should be treated as a single development. While these criteria provide a useful guide they are not necessarily definitive and the circumstances of different proposals will vary. More recent caselaw has reaffirmed that the decision whether to treat two development areas as forming part of a larger site is a matter of judgement³.
9. Third parties have submitted compelling evidence in respect of the ownership of the two sites and the connections between the companies involved. The appellant has not specifically disputed these claims and I have no strong reason to reach a different view to the third parties in this respect.
10. Based on the evidence, discussions with the Council on the Autumn Gate scheme commenced in early 2019. Early planning applications on that site showed the proposed houses turning their backs on the appeal site, providing no obvious potential links and suggesting that it was not intended to develop the appeal site at that time⁴. Both those earlier applications were pursued to appeal stage and I have no reason to believe they would not otherwise have been constructed had those appeals been allowed. Both the Council and the appellant assert that the subsequent change to the site layout arose from the need to reorientate the dwellings in response to the Council's concerns for trees.

¹ AL/64/20/PL

² R (Westminster City Council) v First Secretary of State and Brandlord Limited [2003] J.P.L 1066

³ New Dawn Homes Ltd v SSCLG [2016] EWHC 3314 (Admin)

⁴ APP/C3810/W/20/3256210 (Council ref AL/27/20/PL) and APP/C3810/W/20/3249051 (Council ref AL/51/19/PL)

11. Following the grant of planning permission and transfer of the site to Imperial Homes, development on the Autumn Gate scheme commenced in March 2021. It is relevant that the transfer of title from Domusea (Strategic) Limited to Imperial Homes at that time included provisions for the 'Future Development Area', being the majority of the current appeal site, and the potential development of that land was clearly being borne in mind at that time. The Autumn Gate development was subsequently completed and occupied, with the first sales occurring around 2022.
12. The appellant reports that an options agreement for the appeal site did not emerge until August 2022 and pre application discussions with the Council for the development of the appeal site commenced early the following year. Despite the 2021 title transfer allowing for this eventuality, these events suggest that the development of the sites have been considered in succession and independently, rather than as a single development.
13. While the developments may eventually benefit from shared access and infrastructure including drainage which was provided by the Autumn Gate scheme, this is not an uncommon relationship for a windfall site adjacent to existing development. While there is little evidence of the interconnectivity of the two sites historically, today the main part of the appeal site is clearly separated from Autumn Gate, both physically and functionally and this would appear to have been the case for some time. The exception to this is the open strip of land to the south of Autumn Gate, which reads as part of the Autumn Gate development and was an integral part of its planning permission. This part of the appeal site has clearly been an integral part of both development proposals. However, even if this section of the appeal site were to be aggregated with the Autumn Gate development, it is not apparent that this would have amended the requirement for affordable housing, since it is based on number of units.
14. On balance, based on the evidence before me, including the planning history and its timescales, and the characteristics of the site, the appeal site in its entirety should not be considered an additional phase of a single development. In light of the above, I conclude that the proposed development does not attract a requirement for the provision of affordable housing. The proposal would be acceptable in this respect and would not conflict with Policy AH SP2 of the LP which sets out the affordable housing threshold, nor the requirements set out in the Framework.

Other Matters

Trees

15. A protected beech tree exists towards the south western side of the site in a neighbouring garden⁵. This is a tall, imposing tree which rises above the height of others nearby, contributes positively to the verdant character of the area and has high amenity value. The canopy of that tree would extend over parts of the rear gardens of Plots 1 and 2 of the proposal, and close to the proposed houses.
16. The appellant's Tree Shade Assessment acknowledges BRE Guidance which suggests that tree shapes are difficult to predict and the dappled shade of a

⁵ TPO/AL/1/23 2023

tree is more pleasant than the deep shadow of a building. In this case, as the beech tree is positioned to the south of Plot 1, its garden and some of its windows would be subject to this dappled shade effect. The appellant has demonstrated that not all of the garden would be in constant shade and during the course of the appeal the Council have withdrawn its concerns in this respect. Based on the evidence, the beech tree would not cause unacceptable harm to the living conditions of future occupants.

17. Nonetheless, some increased pressure to prune the tree would be likely to arise from future occupants of the development should they wish to improve natural lighting to the house and garden. However, a degree of pruning of that tree overtime would be inevitable in any event and, given the distance of the tree from the house and the size of the garden to Plot 1, any pruning would not necessarily cause damage to, or the loss of, the beech tree.
18. The proposal would result in the removal of several young trees as well as parts of both established and new hedgerow towards the northern side of the site. Based on evidence from third parties, these trees formed part of a wider landscaping scheme for Autumn Gate which included planting elsewhere in order to mitigate for trees which were lost as part of that development. I understand a condition required replacement of those trees should they die or be removed within a five year period. Nonetheless the trees in question are young and there is no strong reason why these could not be replaced elsewhere among the proposed development. The proposals include the planting of trees around the new houses, including those to the front of the site which would, in time, contribute positively to the character and appearance of the area. The submitted plans demonstrate the height these trees would be likely to rise to and, in the absence of detailed information relating to the scale of former trees on the site, I find these acceptable for this context. For the reasons given the proposal would comply with policy ENV DM4 of the ALP and EH6 of the Aldingbourne Neighbourhood Plan 2021 (the ANP) which together relate to the protection of trees.

Drainage

19. The failure to demonstrate suitable drainage of the site formed one of the Council's reasons for refusal of the planning application, and localised flooding is reported by third parties. The Council are now of the view that a solution could reasonably be achieved, albeit with details to be provided by a planning condition. Based on the evidence I see no reason why an appropriate solution could not reasonably be achieved and I return to this matter below. Subject to such a condition, the proposal would comply with policy WDM3 of the ALP, as well as policy EH5 of the ANP which together require appropriate sustainable urban drainage systems. There would not be conflict with WDM2 of the ALP, which relates to flood risk. There is little information relating to the implications for the existing pumping station, but similarly I see no strong reason why this could not be provided for if its removal were required.

Singleton and Cocking Tunnels Special Area of Conservation (SAC)

20. The site is approximately 11.7km from the Singleton and Cocking Tunnels SAC. These two disused brick railway tunnels constitute the most important site for hibernating bats in south-east England. Its qualifying features, and the reason for its designation, relate to its hosting of species of Barbastelle and Bechstein's bats. Accordingly, its conservation objective is to ensure the

integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the favourable conservation status of its qualifying features.

21. In addition to the SAC containing important roosting or hibernation sites, due to the highly mobile nature of bats, the area of habitat crucial to the maintenance of their populations extends beyond the physical limits of the SAC. Functionally linked habitats can include foraging areas, supporting roost sites and flight lines/ commuting routes for dispersal. The South Downs Local Plan and its Habitat Regulations Assessment adopt a precautionary approach and identify two buffer zones to the SAC of 6.5km and 12km. Within the 12km zone, significant impacts of severance to flight lines should be considered. This includes physical severance of flight lines and impacts due to disturbance and lighting.
22. The appellant's Preliminary Ecological Appraisal found the site to offer low potential for foraging or commuting bats and that the surrounding residential development and lit areas mean the site is not well-connected to good habitat nearby. This study included a Preliminary Roost Assessment which found no evidence of bat occupation in the metal shed on the site and that it had negligible potential for roosting bats. While the appellant's Reptile and Bat Survey identified a limited number of bats, these were not of the species for which the SAC is designated. The evidence therefore satisfactorily demonstrates that the appeal site does not constitute a significant flightline feature nor support any foraging or functionally linked habitat to the SAC, and would not cause severance of any such flightlines. On this basis, and even adopting the necessary precautionary approach, the evidence leads me to conclude that the proposal would not have a likely significant effect, either alone or in-combination with other plans or projects, on the specific qualifying features of the SAC.

Further Matters

23. The proposal would result in the loss of a strip of open space which the evidence demonstrates is clearly valued by the residents of Autumn Gate. The Framework acknowledges the benefits of open spaces to health and well-being, nature and climate change. However, given the size and nature of the land in question, together with the availability of private gardens and other shared spaces, the loss of this space would not cause unacceptable harm to the living conditions of occupants of Autumn Gate or the unacceptable loss of outdoor amenity space as set out in the Council's Design Guide. Its wider public value is limited by its scale and position within a private road, and its loss would not conflict with the objectives of the Framework.
24. As referenced above, the appellant has provided ecological reports which considered the effects of the development on protected species, some of which have been observed in the area by local residents. I have no strong reason to doubt the findings of those reports and the recommendations of the Council's ecologist, who recommended appropriate conditions including mitigation and ecological enhancements. While the strip of land adjacent to Autumn Gate provides some ecological enhancements, including those installed by residents, such enhancements could similarly be secured for the wider appeal site. Subject to the relevant conditions, the proposal would be acceptable in terms of its ecological effects.

25. While there would undoubtedly be a change in outlook from the properties of Autumn Gate which currently have open outlook over the appeal site, this would not amount to unacceptable harm to the living conditions of their occupants. Given the distances involved between the proposed houses and those on Autumn Gate, and in considering the characteristics of the Autumn Gate properties as a whole, harmful impacts on the living conditions of those occupants would not arise. No objection was raised by the Highways Authority to the proposals, and I have no strong reason to doubt its findings or reach a different view.
26. There is not evidence to suggest the resultant densities would conflict with the development plan. The proposal would be acceptable in terms of its effects on the character and appearance of the area and relationship to neighbouring properties for the reasons set out and given the site's varied residential setting. As such the proposal would not conflict with Policy H3 of the ANP regarding density. For the above reasons taken together, and given the position of the appeal site within the built up area boundary, the proposal would also comply with Policy H6 of the ANP, which supports residential development of specified types within the built up area boundary subject to criteria.
27. A number of grade II listed buildings have been identified within 1km of the appeal site around Westergate Street. However, given their distance from the appeal site and presence of intervening buildings, the proposal would not form a part of their setting.
28. The Council accept that it cannot demonstrate a five year land supply for housing. As such, the provisions of paragraph 11d) of the Framework are relevant to the appeal. It is not disputed that the ANP meets the criteria set out in paragraph 14 of the Framework, however, for the reasons set out, conflict with the neighbourhood plan has not been found. Reference is also made to the Barnham and Eastergate Neighbourhood Plan, however, it is not apparent that the appeal site lies within the remit of that plan. Other adverse impacts of granting planning permission have not been identified and accordingly the proposal benefits from the presumption in favour of sustainable development in the Framework.
29. I appreciate the concerns of local residents surrounding the perceived transparency of potential intentions for the appeal site at the time they purchased their properties. However, this would not amount to a reason to withhold planning permission and matters relating to the management and maintenance of the land lie outside the scope of this appeal. The information submitted with the planning application and appeal in respect of ownership has been adequate for their assessment. While alternative development schemes may be preferable to local residents, I am required to assess the proposal before me.

Conditions

30. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.

31. In addition to the standard time limit for the permission, a condition is necessary to list the approved drawings to provide certainty. For visual amenity, details of materials shall be conditioned, and I have added a condition to ensure that the proposed tree planting is undertaken and replaced where appropriate. For reasons of highway safety and to help protect the living conditions of local residents during construction, a construction management plan is necessary and conditioned.
32. To ensure appropriate surface water drainage, full details should be secured by condition, as should the change to the width of the Autumn Gate carriageway for highway safety. In accordance with the recommendations relating to protected species, including reptiles and bats, appropriate mitigation is secured. As the Council's Ecologist finds the proposed reptile mitigation to be sufficient to compensate for the disturbance, a condition is required to bind the development to that plan, rather than requiring a new strategy. The submitted plans include details of ecological enhancements, including an ecology buffer to the southern part of the site, which align with the enhancements set out in the appellant's Preliminary Ecological Assessment. As such I have amended the Council's wording to ensure compliance with that plan.
33. To protect relevant trees, protective fencing shall be installed in accordance with the details provided. Based on the evidence, it is not apparent why further measures, including confirmation of compliance with the protection measures and utility details, would be necessary or reasonable here. Given the reported nearby archaeological finds, suitable consideration of such deposits on the appeal site should also be conditioned. For sustainability reasons, and to meet the local plan requirement, details of energy efficiency or low carbon measures should be provided. While a plan shows air source heat pumps and PV panels, it is not apparent that these would meet the policy requirement and further supporting details are therefore necessary. For the safety of future occupants, a condition relating to unexpected land contamination also meets the test of necessity.
34. Of those referred to above, the conditions relating to surface water drainage, reptile mitigation, construction management, tree protection, and archaeological heritage should be pre-commencement to ensure they are addressed at an early stage and as a later trigger could limit either their effectiveness or the scope of measures which could be used.
35. As the site is predominantly flat and finished floor levels shown on the sections, it is not apparent that further details of the finished floor levels would be necessary, and there would be ample space for private cycle parking within the area of each new house as shown on the plans. As such conditions relating to these matters do not meet the relevant tests.

Conclusion

36. The proposal would comply with the development plan and the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 1186/DP601 Rev.01, 1186/DP602 Rev.01, 1186/DP603 Rev.01, 1186/DP604 Rev.01, 1186/DP605 Rev.01, 1186/DP606 Rev.01, 1186/DP607 Rev.01, 1186/DP608 Rev.01, 1186/DP609 Rev.01, 1186/DP610 Rev.01, 1186/DP611 Rev.01, 1186/DP612 Rev.01, 1186/DP613 Rev.01, 1186/DP614 Rev.01, 1186/DP615 Rev.01, 1186/DP616 Rev.01.
- 3) No development, other than site clearance, shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. This shall include details of the following:
 - i) Anticipated vehicle numbers, types and frequencies;
 - ii) Access and routing of vehicles during construction;
 - iii) Parking, loading and unloading areas, and areas of storage of materials;
 - iv) Erection and maintenance of security hoarding;
 - v) Wheel washing facilities and other means to mitigate the impact on the public highway;
 - vi) Details of public engagement, and hours of work.The construction process shall be carried out only in accordance with the approved details.
- 4) No development shall commence until tree protection measures have been installed in accordance with those detailed in section 11, and associated appendix 9 of the Arboricultural Impact Assessment: Method Statement and Tree Protection Plan of 24 August 2023 by Travor Heaps. Those measures shall be maintained in full accordance with those details until such a time that the construction is complete.
- 5) No development shall commence, other than works of 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 details submitted shall demonstrate consideration of the hierarchy of preference for drainage disposal set out in associated guidance. The proposal should be supported by winter groundwater monitoring to establish highest annual ground water levels and winter percolation testing to support any infiltration drainage, and details of the maintenance and management of the proposed system. The development shall be carried out and maintained in accordance with the approved details.
- 6) Prior to the commencement of development, the measures set out in section 6.8 'Mitigation and Compensation' of the Reptile and Bat Survey Report dated 11 October 2023 by South Downs Ecology shall be carried out insofar as they relate to the clearance of the site and provision of the receptor area. The development, including its construction, shall be carried out in accordance with the remaining measures it sets out.

- 7) No development shall commence until a scheme for the investigation of potential archaeological deposits on the site, and details of a scheme for their onwads preservation, recording and publication if necessary, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of development above any damp proof course, details of the external materials and finishes of the buildings shall be submitted to, and approved in writing by, the local planning authority. The development shall be carried out only in accordance with the approved details.
- 9) Prior to commencement of development above the damp proof course, details of how at least 10% of the energy supply for the development shall be secured from decentralised and renewable or low carbon energy sources, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Not later than 6 months following the first occupation of the relevant dwelling, the ecological enhancements to that part of the site shall be installed in full accordance with the measures shown on drawing 1186/DP614. The 'ecological buffer' shall be not less than 2m in depth, and all features shall be maintained at all times.
- 11) No external lighting shall be installed to any part of the site unless details have first been submitted to, and approved in writing by the local planning authority. Those details shall demonstrate the effects of any lighting on bats and lighting shall be installed and maintained only in accordance with the approved details.
- 12) Prior to the first occupation of any part of the development, the proposed alterations to the width of the Autumn Gate carriageway shall be carried out in full.
- 13) If during the course of the development, any visible contaminated or odorous material not previously identified, is found to be present at the site, no further development shall be carried out, unless otherwise expressly agreed in writing by the local planning authority. The local planning authority shall be informed immediately of the nature and degree of the contamination present and a method statement detailing how the contamination will be dealt with shall be prepared and submitted to the local planning authority before being implemented.
- 14) Tree and hedge planting shall be undertaken in accordance with the details shown on plan GS205.HookLane.RPP (version 3 dated 03.09.23) no later than the first available planting season following the first occupation of the part of the development to which it relates. Any trees or plants which within a period of 5 years from the completion of the 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.

End of Schedule