



Appeal Decision

Site visit made on 19 November 2024

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2024

Appeal Ref: APP/Z3825/W/24/3341185

Wedgwood, Farthings Hill, Horsham, West Sussex RH12 1TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Shingadia against the decision of Horsham District Council.
 - The application Ref is DC/23/1748.
 - The development proposed is redevelopment of the site to provide 7 residential units, ancillary parking and landscaping with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to an application for outline planning permission. Approval is sought for access, but matters relating to appearance, landscaping, layout and scale are reserved for future consideration. I have had regard to the submitted plans which include an Illustrative Landscape Masterplan and Indicative Plans and Elevations for the dwellings. However, while these show one potential way that the site could be developed, there could be alternative ways to bring forward a scheme as part of a reserved matters submission. I have therefore treated details apart from those relating to access as illustrative.
3. In determining the planning application, the Council identified that subject to mitigation measures being secured, the proposal would not lead to adverse effects on the integrity of the Arun Valley Special Protection Area ('SPA'), Special Area of Conservation ('SAC') and Ramsar site. During the appeal process however, it raised concerns in respect of the Unilateral Undertaking ('the UU') submitted by the appellant which included obligations purporting to mitigate effects on the Arun Valley sites.
4. The SPA and SAC are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'), and the National Planning Policy Framework ('the Framework') indicates that the Ramsar site should be similarly protected. The appellant was afforded an opportunity to respond to the Council's comments on the UU and while they have not done so, I am therefore satisfied that no unfair prejudice would be caused by my taking this matter into account within my decision as I must in accordance with the duties under the Habitats Regulations and the Framework.

Main Issues

5. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area

- including in respect of trees;
- ii) the effect of the proposal on the Arun Valley Special Protection Area, Special Area of Conservation and Ramsar site; and
- iii) the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular regard to privacy, natural light and whether or not it would be overbearing.

Reasons

Character and Appearance

6. The appeal site includes a detached dwelling with annex located on Farthings Hill, very close to the junction with the A24 Interchange. Dwellings on this side of Farthings Hill vary in form and design, but they are typically large properties which are set well back from the street on sizable plots, forming a loose ribbon. There is a densely vegetated verge in front of a spur alongside part of the street and further mature trees are visible within front gardens and to the rear of dwellings, including a large Oak to the rear of the appeal site. Together with the usually generous landscaping around buildings and boundary vegetation, these factors provide for an attractive spacious and reasonably verdant quality to this part of the street scene.
7. The illustrative plans show the 7 dwellings proposed as two detached dwellings, on a broadly similar alignment to the neighbour at Oaklands, one to either side of an access from Farthings Hill, behind which would be a terrace of five dwellings on the rear part of the site.
8. The appellant's Arboricultural Impact Assessment indicates that this arrangement would result in a very slight incursion of development to the root protection area of the large Oak tree to the rear of the site. Having regard to the minimal degree of incursion and subject to suitable protection and construction methods which could be secured by planning conditions, construction of the development would be unlikely to result in direct adverse effects on the health or longevity of the tree.
9. However, separation between the tree and the closest dwelling would be relatively limited. The position of the tree to the north corner of the site would limit likely overshadowing, but the canopy would still overhang a significant proportion of the main rear garden space. The proportion could increase further in future should the crown rebalance as the Council's Arboricultural consultee notes could happen following removal of a tree that historically shared a canopy with it. While the canopy is raised, future occupiers may still perceive nuisance or danger associated with the tree and given the extent of the closest garden that it would overhang, this could well lead to pressure for works to the tree or its removal. The contribution that the tree currently makes to the verdant character of the area could therefore be diminished.
10. In addition, the position of the terrace sitting deep into the site and behind frontage dwellings would contrast with the characteristic arrangement of development on this side of Farthings Hill. The dwellings would have much smaller footprints than others here, and the plots would also be considerably smaller so that space around the buildings would be comparatively limited. The repeated effect of this across the site would reinforce the impression of an unusually high density. As seen from the street, the overlapping arrangement of the terrace and detached dwellings would further present a solid block of

development spanning nearly the full width of the site. In combination, these factors would cause the development to appear awkwardly squeezed onto the site and there would be a conspicuous and pronounced erosion of the distinctive spacious character of the area.

11. I recognise that layout, scale, appearance and landscaping are reserved matters and that the illustrative plans do not represent the only way that the site could be developed. However, while the appellant suggests that development could comprise houses, flats or a combination of the two, I have no details of any alternative scheme to show how any proposal could integrate sympathetically with its surroundings and avoid undue pressure on the Oak tree. From the information before me, it is difficult to see how 7 dwellings could be appropriately provided without resulting in an incongruously high density of development and a discordant loss of existing spaciousness on the site.
12. In seeking development that relates sympathetically to its surroundings and that complements locally distinctive character, Policies 25, 32 and 33 of the Horsham District Planning Framework 2015 ('the HDPF') do not specify that character relates only to the immediate surroundings of a site.
13. The appellant has drawn my attention to Firs Close as an example of higher density development in the vicinity of the site, as well as Farthings Walk and Pines Ridge as further cul-de-sacs which I accept form part of the character of the wider area. That being said, these developments are not appreciated as part of the street scene to the north east of Farthings Hill within which the appeal site sits and against which the development would be seen. The provision of higher density development within a cul-de-sac arrangement on the appeal site may not be exceptional in the wider area and this context would help to moderate the harm to some degree. Even so, the appellant's evidence indicates that the density of the proposal would be higher than Firs Close and in my view, the degree of the contrast that the material before me suggests would arise between the proposal and its closest neighbours would be striking and would cause it to stand out in this location. Notwithstanding the character of the broader surroundings, the proposal would sit uncomfortably against its neighbours, and would cause a harmful erosion of the distinctive spacious quality which contributes positively to the character and appearance of the area.
14. I have also noted reference to an appeal decision considering a proposal at Ridgehurst Drive where it was found that a higher density of development than is proposed here would not cause material harm to the character or appearance of the area. However, that decision comments that the properties would be of a size and have a garden area comparable to the neighbouring properties which I saw include relatively closely spaced dwellings and terraces on modest plots. Given this differing context, the circumstances are not directly comparable to the appeal proposal. Noting also its distance some way from the site, this example does not offer meaningful support for the development before me.
15. Policy 33 of the HDPF includes a requirement for efficient use of land and there are similar objectives in the Horsham Blueprint Business Neighbourhood Plan 2022 ('the NP') and the Framework. However, these are balanced and qualified alongside requirements seeking to ensure high quality design and development that respects and is sympathetic to local character. For the reasons set out above, it has not been demonstrated that the proposal would achieve those

aims and general support for making efficient use of land is not in itself a compelling justification for the development.

16. In conclusion, I am not satisfied from the information before me that the appeal site could accommodate the 7 dwellings proposed without undue harm to the character and appearance of the area. The proposal would therefore be contrary to requirements of Policies 25, 32 and 33 of the HDPF broadly seeking protection and enhancement of townscape character and development that relates sympathetically to its surroundings and locally distinctive character. It would also be contrary to Policy HB4 of the NP insofar as it includes a requirement for development that integrates well with its surroundings.
17. The Council's reason for refusal additionally refers to Policy HB5 of the NP, but this seeks sustainable design in order to reduce energy consumption and climate effects and seems to me to be of less direct relevance here.

Arun Valley Special Protection Area, Special Area of Conservation and Ramsar site

18. In circumstances where a proposal is likely to have a significant effect on a habitats site designated under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'), there is a duty on the competent authority to consider implications for the conservation objectives of the Site within the framework of an Appropriate Assessment. This duty would now fall to me. In accordance with the Framework, Ramsar sites should be afforded equivalent protection to habitats sites.
19. The information before me indicates that the Arun Valley SPA is designated for waterbird assemblages, including Bewick's swan and the SAC is designated for the little whirlpool Ramshorn snail. The conservation objectives of the SPA and SAC seek broadly to ensure that their integrity is maintained or restored and that the sites contribute to achieving the favourable conservation status of qualifying features by maintaining or restoring the extent, distribution, structure, function and population of qualifying features and the supporting processes on which habitats of the qualifying features rely.
20. Natural England has issued a Position Statement identifying that existing groundwater abstraction within the Sussex North Water Supply Zone ('the SNWSZ'), which includes the appeal site, cannot be ruled out as contributing to adverse effects on the integrity of the Arun Valley sites. It advises that new development with a requirement for abstraction within the SNWSZ would be likely to have an adverse effect. However, one way to ensure that development would not have an adverse impact on the integrity of the Arun Valley sites is to demonstrate 'water neutrality'.
21. The proposed dwellings would have an associated demand for water and could therefore result in increased water abstraction in the SNWSZ. On that basis, the appeal proposal, either alone or in combination with other plans and projects, could have a likely significant effect on the integrity of the Arun Valley sites.
22. As part of the application, the appellant provided a Water Neutrality Statement ('WNS') dated 14 September 2023, with a revised version dated 14 October 2023. Both versions of the WNS outline that the proposal would increase water demand relative to the baseline of the existing site. However, it is suggested that the development could achieve water neutrality through the installation of

- water efficient fixtures and fittings to the proposed dwellings, and offsetting of the remaining additional demand through retrofitting of flow control devices to 16 of Moat Housing Association's properties within the catchment area.
23. In principle, I am satisfied that these measures could ensure no adverse effects on the integrity of the SPA, SAC or Ramsar site.
24. However, while installation of water efficient fixtures and fittings within the development could reasonably be secured by a planning condition, the offsetting element of the mitigation relies on land outside of the appeal site and the appellant's control. The October WNS suggests that Moat Housing Association has confirmed that they would allow the installation of the flow device on their properties, but I have not been provided with details of any formal agreement. In these circumstances and from the information before me, I am not satisfied that a condition in respect of offsetting would be enforceable or reasonable here. It would not therefore meet the tests for conditions in the Framework.
25. Moreover, the First Schedule to the appellant's UU includes requirements that development does not commence until Water Neutrality Credits have been purchased and details confirming Water Neutrality Credits have been provided to the Council. The definitions to the UU suggest that Water Neutrality Credits means 'credits purchased to mitigate the impacts of the Development to ensure water neutrality in accordance with the Water Neutrality Statement at Annex 1 of this Deed'. However, the WNS makes no reference to purchase of any credits, relying instead on offsetting through retrofitting of flow control devices to Moat Housing Association properties.
26. Given this discrepancy, there is a marked lack of clarity around what is intended. I am concerned that implementation of the strategy that is actually detailed in the WNS would not be properly secured, and in the absence of any other details setting out how a credit purchase scheme would operate, it has not been demonstrated that this would be effective as a means to offset remaining water demand associated with this proposal.
27. I also note that Moat Housing Association is not a party to the UU and so would not be bound by its requirements. In addition, there is no schedule detailing the land/properties where retrofitting of flow control devices would be carried out to deliver the required offsetting. I do not know if they would be located within the local planning authority area, and I cannot be sure that they would not also be included as part of an offsetting scheme for development elsewhere. Even if I were satisfied that the UU properly related to the strategy outlined in the WNS, these shortcomings mean that the UU offers limited confidence that effective mitigation would be delivered, and further that the obligations would be adequately enforceable.
28. I therefore find the UU does not offer sufficient assurance that effective mitigation to offset additional water demand at the site would actually be secured in practice. The achievement of water neutrality is consequently in doubt.
29. As the competent authority, I would need to be satisfied that the integrity of the Arun Valley sites would not be adversely affected by the proposal. I appreciate that Natural England had not objected to the proposal, but that was subject to the delivery, management and maintenance of measures identified in the WNS to achieve water neutrality. Having regard to all of the above, I find

that there is no appropriate mechanism to adequately secure the identified measures in respect of offsetting. Accordingly, I am unable to determine that the proposal would achieve water neutrality.

30. For these reasons, I conclude taking a precautionary approach that adverse effects on the integrity of the Arun Valley SAC, SPA and Ramsar site can not be excluded. I have no firm reason to find that there are no alternative sites that could accommodate the development with lesser effects on the integrity of the designated sites, nor that there are imperative reasons of overriding public interest that would outweigh the adverse effects. In these circumstances, the operation of the Habitats Regulations would preclude the proposal. There would also be conflict with Policy 31 of the HDPF which sets out, amongst other things, that permission will be refused where development is anticipated to have an adverse impact on biodiversity sites such as SPAs and SACs unless appropriate mitigation measures are provided.

Living Conditions

31. While details of the layout, scale, appearance and landscaping of the development are illustrative only at this stage, the indicative plans for Plots 1-5 to the rear part of the site show that first-floor windows closest to Oaklands could be obscure glazed or angled away from the boundary such that there would not be direct views of this neighbour or its garden. I also saw that the existing building on the appeal site includes clear-glazed first-floor windows to the side elevation facing Oaklands as well as windows to its rear. Even if dwellings on the front part of the site were positioned closer to the boundary, any views would be unlikely to result in more intrusive overlooking of this neighbour than currently occurs. Accordingly, I am satisfied that the proposal would not cause a harmful loss of privacy for occupiers of Oaklands.
32. Windows to the rear of plots 1-5 would face towards the rear part of the garden to 19 Wildgoose Drive rather than the dwelling. This part of the garden includes an outbuilding with glazing and decking. However, the existing boundary fencing provides for some screening which is further supplemented by vegetation, albeit that I acknowledge that vegetation can die or be removed. The Council's evidence does not refer specifically to harm to No 19 in respect of privacy and having regard to the potential for separation and the overall relationship, I see no firm reason that a reserved matters submission would be unable to ensure that overall living conditions for occupiers of No 19 would not be undermined through an unacceptable loss of privacy.
33. Furthermore, development on the rear part of the appeal site would not alter the main outward aspect from windows to the rear of the closest neighbouring dwellings which would remain views along their deep gardens. It may be apparent in oblique views or views from the outbuilding to No 19, but I am satisfied that sufficient separation could be provided to ensure that it would not be excessively dominant or cause any significant loss of outlook or light for these windows. It would also be likely to be perceived alongside only a modest proportion of the deep gardens such that it would not result in an undue impression of enclosure or overshadowing to these spaces.
34. The illustrative plans suggest that plot 7 would sit forward of the existing dwelling to be broadly alongside Oaklands. In this position, it would have a reduced presence in views from the rear of this neighbour in comparison to the

existing dwelling. However, I saw a clear-glazed window to the side elevation of Oaklands facing the appeal site.

35. Currently, much of the outlook from this window is onto the boundary fence and front corner of the existing appeal dwelling, but there are also open views above the level of the fence across the appeal site frontage. Based on my observations, the two-storey building that the illustrative plans show on plot 7 in close proximity to the boundary would effectively close off open views from the window to the side of Oaklands resulting in a significant increase in the impression of enclosure and a loss of outlook for the room served. Although not part of the Council's case, I agree with interested parties that the close relationship would also be likely to have some effect on natural light to the window and there is no substantive evidence before me to demonstrate that effects would not be significant.
36. However, while I acknowledge the constraints on the site including the mature Oak tree, it seems to me that there would still be scope to bring forward an alternative form of development at reserved matters stage including in respect of the scale, appearance or layout of development on this part of the site which could mitigate potential for unacceptable harm to living conditions for occupiers of Oaklands. On that basis, loss of outlook and light to Oaklands caused by plot 7 would not be determinative in this case.
37. For these reasons, I conclude that there would not be unacceptable harm to living conditions for occupiers of neighbouring dwellings. Accordingly, I find no conflict with Policy 33 of the HDPF insofar as it includes a requirement for development to avoid unacceptable harm to the amenity of occupiers of nearby property.

Other Matters

38. I have noted additional concerns raised by interested parties including in respect of the safety of the highway access, parking provision, flood risk and provision for wastewater. I have also noted comments in support of the proposal including in respect of the quality of the development, making good use of land and the benefit of housing provision and modern and smaller houses in particular. However, none of the matters raised alter my conclusions on the main issues or overall planning balance.

Planning Balance

39. The appellant refers to the 2022/23 Monitoring Report which suggests that the Council is able to demonstrate only a 2.9 year housing land supply. The Council has not disputed that this is the current position. Paragraph 11 d) of the Framework is therefore relevant and indicates that planning permission should be granted unless (i) the application of policies in the 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 the Framework taken as a whole.
40. The proposal would make effective use of the site which is within the built-up area, providing for a net gain of six dwellings towards the supply of housing locally. The Framework seeks to significantly boost the supply of housing, and in light of the current supply shortfall, the provision of housing is an important

factor which attracts great weight. The Framework also advises that substantial weight should be given to the value of using suitable brownfield land within settlements for homes. That said, the modest scale of the proposal would limit the contribution made to the overall supply of housing and consequently the extent of the benefit.

41. Furthermore, the precise housing mix would depend on the reserved matters and while I note the appellant's suggestion that there would be a good mix of 2, 3 and 4-bedroom dwellings, I can therefore give limited weight to this factor. Similarly, the suggested biodiversity net gain of 36.9% habitat units and 306.94% hedgerow units would depend on details including of landscaping which would be subject to future reserved matters submissions and so the gains cannot be assured at this stage. On that basis, the level of suggested net gain attracts no more than moderate weight.
42. Future occupiers of the site would benefit from the accessible location with access to bus and train services as well as shops and other facilities within walking and cycling distance. There would also be social and economic benefits associated with construction and occupation of the development. These benefits would be limited by the small scale of the proposal though.
43. On the other hand, I have found that living conditions for neighbouring occupiers would not be adversely affected. However, this would not outweigh the harm that the proposal would cause to the character and appearance of the area and to the Arun Valley sites and I find that the proposal would conflict with the development plan when it is read as a whole.
44. Harm to character and appearance would be localised and limited given the wider context, but would be contrary to objectives in the Framework seeking development that is sympathetic to local character. As a result of my findings that adverse effects on the integrity of the Arun Valley sites can not be excluded, policies within the Framework relating to habitats sites and Ramsar sites would in this case provide a clear reason for refusing the development, and the presumption in favour of sustainable development at paragraph 11 of the Framework would not apply.
45. Notwithstanding the shortfall in housing supply and the benefits of the proposal, I find the adverse effect on designated nature conservation sites and conflict with the Habitats Regulations is a matter of overriding concern. Even taken together, I find that the cumulative benefits of the proposal are insufficient to outweigh effects on the Arun Valley sites together with the harm to the character and appearance of the area, and the resulting conflict with the development plan and the Framework.

Conclusion

46. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations including the Framework do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR