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## Appeal Decision

Site visit made on 5 November 2024

**by N Bromley BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 December 2024**

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**Appeal Ref: APP/Z3825/W/24/3338029**

**Land adjacent to Saykers, Faygate Lane, Faygate, Horsham RH12 4RF**

- 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 Ian Warrington against the decision of Horsham District Council.
  - The application Ref is DC/23/1004.
  - The development proposed is Erection of 1.5 storey dwelling with associated parking and amenity space.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are;
  - whether the proposed development accords with the development plan strategy for housing and would be in a sustainable location;
  - whether or not the location would be suitable for housing having regard to flood risk;
  - the effect of the proposed development on highways safety; and
  - the effect of the proposed development on biodiversity, with particular regard to protected species.

### Reasons

#### *Location*

3. The appeal site comprises an undeveloped field, located in the open countryside. The land does not have any special designations, such as a Conservation Area, Green Belt, a National Park, or an Ancient Woodland but the surrounding area has a prevailing rural character, with open fields, bounded by tall hedgerows and an abundance of mature trees. There are residential dwellings nearby, which are generally sporadic in nature.
4. Policies 1, 2, 4, and 26 of the Horsham District Planning Framework 2015 (the HDPF) set out the development strategy and seek to maintain the unique rural character of the district, whilst also encouraging growth within settlements that have suitable access to services and local employment. In particular, Policy 4 of the HDPF allows for some growth of settlements. However, amongst other things, it requires the land to be allocated in the Local Plan or

Neighbourhood Plan and to adjoin an existing settlement edge. HDPF Policy 26 also seeks to protect the rural character and undeveloped nature of the countryside from inappropriate development and proposals must be essential to its countryside location.

5. The appeal site is not located within a settlement boundary, and it does not adjoin an existing settlement edge, with the built settlements of Rusper and Faygate being some distance away. The site is also not allocated for housing in the HDPF or the Rusper Neighbourhood Plan (the NP), as required by Policy 4 of the HDPF. Furthermore, on the evidence before me, the proposal is not essential to its countryside location. Consequently, the proposed development is contrary to the Council's development plan strategy for housing.
6. The National Planning Policy Framework (the Framework) highlights, at paragraph 83, that to promote sustainable development in rural areas, housing should be located where it will enhance and maintain the vitality of rural communities. In this case, the site is physically separate from any settlement containing facilities and services required to meet the needs of the occupants.
7. The surrounding roads have a rural character, with no footways or streetlighting. For these reasons, future occupiers would be discouraged from walking and cycling to access services and public transport opportunities, particularly during hours of darkness and in poor weather conditions. Additionally, I have limited evidence before me of nearby bus stops and the frequency of a bus service. Therefore, it is not known how public transport could support the day to day needs of the future occupiers and how it would enhance or maintain the vitality of the nearby community.
8. My attention has been drawn to two previous appeal decisions<sup>1</sup>, which the appellant suggests demonstrates that while conflicts with Policy 4(1) may arise, they do not necessarily invalidate a proposal if there are no substantial conflicts with the overall development plan or spatial strategy. However, copies of those decisions have not been provided and I do not know the full circumstances of each case in order to draw comparisons between those schemes and the appeal scheme. Given this, these examples do not add weight in favour of the scheme. Therefore, as I am required to do, I have determined the case before me on the site-specific circumstances and on its own merits.
9. For the above reasons and on the evidence before me, I conclude that the proposed development does not accord with the development plan strategy for housing, and it would not be in a sustainable location. It would thereby conflict with Policies 1, 2, 4 and 26 of the HDPF and Policy RUS1 of the NP.

#### *Flood risk*

10. The appeal site includes land within Flood Zone 2 and 3, which has a medium to high risk of flooding. In these instances, Policy 38 of the HDPF, as well as the Framework and the Planning Practice Guidance (the PPG) require a sequential approach to flood risk management, giving priority to development sites which have the lowest risk of flooding, as well as making required development safe without increasing flood risk elsewhere. In addition, Policy

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<sup>1</sup> APP/Z3825/W/16/3150965 and APP/Z3825/W/15/3022944

38 of the HDPF requires that a site-specific flood risk assessment (FRA) should be provided for all development in Flood Zones 2 and 3.

11. While the appellant has submitted flood risk information, this falls short of an FRA. As a result, although some of the appeal site is within Flood Zone 1, which has the lowest probability of flooding, the flood risks posed by the proposed development are unknown. As such, flood risk to and from the proposed development has not been adequately assessed and it is not certain whether flood risk could be managed now and over the lifetime of the development. For similar reasons, the Environment Agency has also objected to the proposals.
12. Furthermore, a sequential test (ST) has not been undertaken. Without an ST, I therefore cannot be satisfied that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the sequential test and would therefore not be an acceptable form of development with regards to flood risk.
13. For these reasons, I conclude that the proposed development is not in a suitable location having regard to flood risk. Therefore, it is contrary to Policy 38 of the HDPF, and the flood risk aims of the Framework.

#### *Highway safety*

14. The appeal site has an existing narrow field access onto Faygate Lane, and the proposal is for a new access further along the road. The road has a 40mph speed limit and has a rural character with high hedgerows on both sides of the road. There are no segregated footways and there is limited streetlighting.
15. The new vehicle access would require a large section of the established frontage hedgerow to be removed. Indeed, the Highways Authority identify that visibility splays of 120m in both directions, taken from 2.4m from the back edge of the carriageway, are required to be achieved for the proposed access.
16. The appellant accepts that the necessary visibility splays cannot be achieved and that a speed survey, which could establish whether reduced visibility splays are appropriate or not, has not been submitted. Therefore, there is limited substantive evidence which demonstrates that a safe access can be achieved for the proposed development.
17. Consequently, for the reasons outlined above and on the evidence before me, I conclude on this main issue that the development would have an unacceptable impact on highway safety, which would fail to accord with Policies 40 and 41 of the HDPF. These policies, amongst other provisions, require development to meet the needs of all users and provide safe and suitable access for all vehicles, pedestrians, and cyclists.

#### *Biodiversity*

18. The appeal site is an undeveloped field, located within an amber Great Crested Newts (GCN) impact risk zone. The evidence also suggests that the site is within 250 metres of a pond. As such, and without any substantive evidence to the contrary, the local presence of GCN is likely.

19. GCN are designated and protected under the Conservation of Habitats and Species Regulations 2017. Current advice states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
20. Ecological surveys have not been submitted and as a result, it has not been demonstrated that the proposal would not cause unacceptable harm to protected species. Furthermore, while it is suggested that there is adequate scope to introduce measures to secure biodiversity net gain, there is a lack of substantive detail of the proposed measurable biodiversity net gain, as supported by the Framework.
21. Consequently, I conclude that it has not been shown with any certainty that the proposed development would not cause unacceptable harm to biodiversity, with particular regard to protected species. This is contrary to Policy 31 of the HDPF which, amongst other things, seeks the protection and enhancement of biodiversity and nature conservation features.

### **Other Considerations**

22. The Council accept that they cannot demonstrate a five year supply of housing land and the evidence before me suggests that the current figure is calculated as being 4.3 years.
23. The site is classed as grade 4 (poor quality) agricultural land that is currently underused. It also represents a windfall site and housing on the land could be delivered relatively quickly. As such, the proposal would make a small numerical contribution to reducing the housing supply deficit. This attracts considerable positive weight.
24. There would also be social and economic benefits to local services during the construction and occupancy phases. Whilst the appellant highlights that the proposal would be a high quality, energy efficient family home, and that it would be a custom and self-build plot, there is limited evidence before me of a mechanism for securing the dwelling as a custom and self-build plot. Therefore, given that the proposal would result in only one new dwelling, these benefits would be moderate.
25. There is no dispute between the parties that the Council has raised no concerns with regard to the effect on the living conditions of nearby residential properties or the design of the dwelling and the effect on the character and appearance of the landscape. Existing trees and hedgerows would also be retained. However, these are requirements of planning policy and taken together they carry limited weight.

### **Other Matters**

26. The Council has highlighted in the Delegated Officer Report that the appeal site falls within the Sussex North Water Supply Zone. Natural England has issued a Position Statement that it cannot be concluded with the required degree of certainty that new development in this zone would not have an adverse effect on the integrity of the Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites. However, as I am dismissing for

other reasons, there is no need for me to undertake an Appropriate Assessment, as doing so would not change the outcome of the appeal.

27. The appellant raises concerns about delays experienced during the planning application, and as a result a different version of the Framework was published during that time. Nonetheless, this does not affect my consideration of the planning merits of the proposed development which should be determined in accordance with local and national planning policy at the time of the decision.

### **Planning Balance**

28. The proposed development would not be a suitable and sustainable location for new housing, having regard to the development plan's approach to the supply of housing and flood risk. The development would also result in unacceptable harm to biodiversity and protected species, as well as an unacceptable impact on highway safety. These factors would result in significant harm and thus draws the scheme into conflict with the development plan when read as a whole. The identified modest benefits would not outweigh this significant harm.
29. It is the case that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. However, the presumption in favour of sustainable development as set out in Paragraph 11(d) of the Framework does not apply where policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 to paragraph 11(d) of the Framework is clear that this applies to areas at risk of flooding. As a result, the presumption in favour of sustainable development does not apply.

### **Conclusion**

30. For the above reasons, the proposed development would conflict with the development plan as a whole and there are no material considerations of sufficient weight which indicate that a decision should be taken otherwise than in accordance with it.
31. Therefore, the appeal should be dismissed.

*N Bromley*

INSPECTOR