



Appeal Decision

Hearing held on 26 January 2016

Site visit made on 28 and 29 January 2016

by R J Marshall LLB DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 April 2016

Appeal Ref: APP/D3830/W/15/3138211

Land at South Place, Beauport House, Carrsfarm Cottage and Hurst House, Copthorne Common Road, Copthorne, West Sussex, RH10 3LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Henry Lee (Denton Homes Limited) against Mid-Sussex District Council.
 - The application Ref. DM/15/1039 is dated 6 March 2015.
 - The development proposed is Demolition of land at South Place, Beauport House, Carrsfarm Cottage and Hurst House, and the construction of 75 no. new dwellings with associated access, car parking, landscaping and open space.
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Decision

1. The appeal is dismissed and planning permission for Demolition of land at South Place, Beauport House, Carrsfarm Cottage and Hurst House, and the construction of 75 no. new dwellings with associated access, car parking, landscaping and open space is refused.

Background

2. It is agreed between the parties that the Council has no 5 year Housing land supply and I address the implications of this for my decision largely in my concluding paragraphs. The Council has indicated the grounds on which permission would have been refused had it been in time. My main issues are largely drawn from this, together with local concerns on Strategic Gap grounds.
3. Following the close of hearing the appellant submitted a Section 106 Agreement on the provision of on site-affordable housing and the infrastructure that the Council seeks in association with the development. I have had regard to this along with the observations of the parties on it. The terms of the Agreement are acceptable to the Council. However, it has not been completed as it lacks the signature of the District Council and one interested party, a mortgagee, and has not been dated. It would thus have no force.
4. The site is located in the countryside well beyond any settlement boundary. Policy C1 of the Mid Sussex Local Plan (2004) (LP) on protecting the countryside directs development towards the built up areas for all but a limited range of development, such as agriculture or forestry, where a countryside location is essential. The proposed development is not one of the limited forms of development listed as acceptable in the countryside. The proposal is thus, as is common ground between the parties, contrary to LP Policy C1. However,

correctly in my view, the Council raises no in principle objection to the proposed development under this Policy head given the absence of a 5 year housing land supply and the need thereby for some housing in areas delineated as countryside.

5. The site lies within the East Grinstead and Crawley Strategic Gap. LP Policy C2 has the objective of preventing coalescence and retaining the separate identity and amenity of settlements. There are some local concerns that such harm would arise. However, the Council has raised no objection on this ground. Correctly so, in my view, given the limited impact of the proposal on the gap given its setting. Moreover, Policy C2 is of limited weight given that, in terms of the National Planning Policy Framework (the Framework) it should not, as a Policy that may be construed as relevant to the supply of housing, be regarded as up-to-date.

Main Issues

6. The main issues in this appeal are: **first**, whether the site is well located for access to local facilities and services other than by car; **second**, the effect of the proposed development on highway safety and the free flow of traffic; **third**, whether the proposed development constitutes good design and its effect on the character and appearance of the area; **fourth**, the effect of the proposed development on matters of nature conservation importance with special reference to loss of woodland habitat and impact on bats; **fifth**, whether the absence of a completed Section 106 Agreement would prevent the financial contributions on infrastructure and affordable housing sought by the Council and should stand against the proposal; and **sixth**, the benefits of the proposed development and whether any adverse impacts would significantly and demonstrably outweigh the benefits of granting permission.

Reasons

Location of site to facilities and services

7. The appeal site is located off the A264. It lies in countryside east of the village of Copthorne and north-west of the village of Crawley Down. Both villages have schools and doctor's surgeries and a limited range of shops. In both cases these facilities are around 1.6 to 1.8 km from the appeal site. The appellant's estimate that it would take between 18 – 20 minutes to access these facilities from the appeal site by foot and around 4 – 6 minutes by bicycle has not been contested and from what I saw appears broadly correct.
8. However, access by foot from the site to both Copthorne and Crawley Down is poor. To reach Copthorne on made up paths would require a fairly lengthy walk on a narrow footpath alongside the busy A264 along which traffic moves quickly. This alone would make it an uncomfortable walk for many. And some, especially at night or in the evenings, could well be intimidated by the fact that this path has extensive woodland to one side. To access Crawley Down by a made up path would be little better as it would involve a lengthy walk through countryside along a main road.
9. The appellant referred to the existence of other footpaths through the countryside and woodland that may be taken from the appeal site to Copthorne and Crawley Down. The footpaths to both villages are through a mix of woodland and countryside which would discourage many, especially in the hours of darkness to use them. And in addition the path to Crawley Down

when I saw it was, due to ground conditions, impassable other than with walking boots and even then with some difficulty. As things stand these footpaths do not provide a realistic means of obtaining access to the 2 villages on foot. If completed the Section 106 Agreement would have provided a TAD contribution which could have been used to improve some of these footpaths. However, I have been given little detail on what could be achieved and given the countryside the paths run through it is difficult to conceive of schemes that would make their use significantly more likely.

10. A further improvement, which the County Council would be agreeable to undertake, is a widening of the footpath alongside the A264 towards Copthorne. Both parties agree that a condition could be imposed requiring the submission, approval and implementation of such a scheme. The footpath could be widened in accordance with standards in the Design Manual for Roads and Bridges. However, even with such an improvement I am not convinced that a footpath alongside such a busy road and flanked by woodland would be greatly more attractive to use. Moreover, widening the footpath and cutting back vegetation would have an increasingly urbanizing effect to the detriment of the rural character and appearance of the rural area along this length of road.
11. In terms of travel times Copthorne and Crawley Down are within reasonable cycling distance. However, in both cases this would involve cycling along main roads which could well put off many, especially the young and elderly. It is intended that consideration be given to the proposed widening of the path along the A264 incorporating a cycling lane. If such a scheme was achievable it could potentially increase cycle usage to some degree. However, the need still to cycle quite close to a busy road, and with a wooded backdrop, could still be off-putting to many especially in hours of darkness.
12. In terms of access to local facilities the appellant refers to a small convenience shop linked to a petrol filling station on the southern side of the A264 opposite the site. However, although this may provide for some emergency shopping such a relatively small facility is unlikely to result in a reduced demand generally to travel further afield for most provisions. Moreover, crossing the A264 at this point, although statistically likely to be safe, given a widened pedestrian refuge that would be created, would still given the amount and speed of traffic be likely to be intimidating to children and the elderly. In appeal decision APP/D3830/A/14/2215289 for housing development at Pease Pottage the Inspector referred to the proximity to that site of a motorway service station and that this would provide convenience shopping. However, I have been given no substantial evidence on the size of this facility or the safety of pedestrian access to it, all of which is likely to be crucial to its usage. It thus offers little guidance for consideration of the proposal before me.
13. Turning to access obtainable to facilities by bus there are bus stops close to the appeal site on both sides of the A264. From these stops frequent bus services are available to Copthorne and Crawley Down and further afield to Crawley and East Grinstead. There is thus the availability of public transport for use to access facilities locally and further afield, and this may be to a greater extent than in some other areas. However, even with these services available, in this rural location well beyond any settlement boundary and with poor footpath links to the 2 nearest settlements the added convenience of using a car is likely to be the overriding determining factor for most in terms of the form of

transport used. Moreover, the necessity to cross the A264 to get to one of the bus stops could well limit its usage, especially by children and the elderly.

14. One of the documents submitted at application stage refers to proposals for a travel plan, covering such matters as car sharing and travel welcome packs. However, the appellant's case makes little reference to this and no means are suggested of ensuring compliance with any travel plan. I therefore accord little weight to the suggestions of such a plan.
15. It is concluded that the site is poorly located in relation to access to local facilities and services other than by car. As such it would be contrary to LP Policies G2 and T4 which seek to minimise private car trips and Policy DP19 of the Mid Sussex District Plan 2016-2031 Pre-Submission Draft (the emerging plan) in so far as it has the same objective.

Highway safety

16. The Council had initially been concerned about the impact of the proposed development on the capacity of the Dukes Head roundabout to the east of the site. This is also a concern of many locally who have referred to the situation as it exists at present. It is common ground between the 2 main parties that development of the appeal site would need to be linked to improvements to the roundabout to increase its capacity. This is needed to ensure that queues and delays would not be worsened.
17. There is a scheme for such improvements, involving the widening of 3 of the 4 approach roads to the roundabout. Its provision is linked to a substantial residential development permitted to the west of Copthorne. The Council now accepts that its concerns on the capacity of the Dukes Head roundabout to accommodate the increase in traffic arising from the current proposal could be overcome by a Grampian condition linking the improvements to the roundabout with occupancy of the proposed houses. I have been given no substantial technical evidence to justify a contrary view.
18. The Council's concerns on highway safety are now limited to: the safety of pedestrians walking on the footpath alongside the A264 and crossing this road to get to the convenience store on the opposite side of the road; and safety for cyclists on the A264. Although not providing an attractive and pleasant route to walk to Copthorne the adjoining footpath would provide sufficient segregation between traffic and pedestrians for no undue danger in practice to arise. A proposed pedestrian refuge on the A264, although not perceived by many as providing a safe crossing given the volume and speed of traffic would, though complying with appropriate standards, at least be safe in objective terms. Given the volume and speed of traffic on the A264 it is a potentially dangerous route for cyclists. However, it is so apparently dangerous that little harm is likely to arise in practice as the danger would be a substantial disincentive to cycle along it. Moreover, the suggested cycleway along the A264 would provide a safe cycle route albeit, for reasons already given, not a very attractive or pleasant one for those using it.
19. There are some additional concerns from third parties on the location of the proposed access being onto a busy road close to the entrance to a petrol filling station. However, detailed discussions between the highway authority and the appellant following the submission of the application resulted in the provision of an access design and improvements to the highway that have satisfied the

Council that an acceptable access would be provided. All that I saw indicated that this would be so and no technical evidence to the contrary has been given. Adequate car parking is proposed and provided the communal car parking is well designed in detail there is no reason why it should not be used and lead to parking on the public highway.

20. It is concluded that the proposed development would have no detrimental effect on highway safety and the free flow of traffic. Thus there would be no conflict with LP Policy T4 and emerging plan Policy D19 in so far that they seek to ensure safe pedestrian and cycle safety and prevent harm generally in terms of highway safety and congestion.

Good design/character and appearance

21. The appeal site contains 4 large detached houses in substantial gardens that are generally quite well wooded. Clearly the proposed development would constitute a most substantial increase in housing density. However, the proposed layout would retain significant open undeveloped areas and enable the retention of trees of good condition and significance in the landscape. From what I saw the Council is correct to have no objection, on character and appearance grounds, to the tree loss that would occur.
22. There have been extensive discussions between the Council and appellant on the layout of the proposed development and the design of the dwellings. This has lead to a proposal before me which the Council finds broadly acceptable with the following key exceptions. It remains concerned about the size and design of the proposed flats 58-66, the relationship of the bin and cycle store to these flats and the proximity of parking at the rear of 67 to the highway.
23. The flats at 58-66 would be 3 storeys high. They would be located at the far western edge of the site with a side elevation facing Copthorne Road. Although a crown roof would reduce the overall height of the building it would given its height to eaves level be significantly taller than the other proposed dwellings in similar proximity to the main road. Given that this building would be on boundary of the site and the countryside the degree to which it would intrude over and above the other proposed development in views from Copthorne Road would be detrimental to the rural quality of the area. I am of this view notwithstanding the existing development on the opposite side of the road.
24. I do not share the Council's concerns on the detailed design of the flats at 58-66. The varied eaves heights and widow designs would add interest to the building rather than detract from its architectural integrity. Seen from within the site there would be sufficient open space around the building and in its vicinity for it not to appear unduly cramped on its plot. The proposed bin and cycle store would be poorly located in relation to the flats. However, an acceptable re-location could be provided by a modifying condition. The parking spaces at the rear of 67 would be set back sufficiently from the highway to enable an acceptable degree of screen planting to be provided.
25. Drawing together my views on this issue the proposed development is generally well designed. However, the intrusion of the flats 58-66 in views from beyond the site would cause some harm to the rural quality of the area.
26. It is concluded that whilst the proposed development in the main constitutes good design there would for the reasons given be some, albeit small, harm to

the character and appearance of the area. As a result there would be conflict with LP Policy B1 and emerging plan Policy DP24 in so far that they require new development to respect the character of the locality.

Loss of woodland habitats and impact on bats

27. The appellant's ecological report says that there is semi-natural broadleaved woodland on 50% of the site. This is a Habitat of Principle Biodiversity Importance in England (HPBIE) under Section 41 of the Natural Environment and Rural Communities Act (NERC) 2006. Some of this woodland would be retained in the centre of the site and around its perimeter. However, substantial amounts of this woodland habitat would be lost. The ecological report says that the loss of and damage to this habitat would constitute a moderate adverse ecological impact.
28. The Council says, and this was undisputed, that a HPBIE is effectively the same as a Priority Habitat (PH) referred to in *Biodiversity 2020: A Strategy for England's Wildlife and Ecosystems Services (2011)* which has as an objective no net loss of priority habitat and an increase in its overall extent. The appellant's ecological report says that the harm identified to the HPBIE should be compensated by replacement native tree planting across the site.
29. New planting is proposed. However, it appears primarily landscape planting to relatively small gardens rather than the re-establishment of the larger woodland areas that exist at present. I am not satisfied that such new planting would function properly as woodland, with the same ground flora and shrubs, and have the ecological value of such areas. The appellant says that being on existing gardens the current woodland on site could be cut down now. However, there is no substantial evidence that this would occur and if the Council considered there to be such a threat it could serve a Woodland Tree Preservation Order.
30. The appellant has had 2 reports prepared on bats, a protected species. The latter being a more detailed report following an initial survey. This later report found small non-breeding bat roosts of common species present in roofs of 3 of the 4 houses to be demolished and also in one oak tree to be removed.
31. The appellant says that compensation for the loss of the bat roosts may be provided by the incorporation of bat boxes on the external walls of the new dwellings. Without more substantial evidence to the contrary from the Council I have no reason to conclude that this would not be possible.
32. However, a further concern of the Council in relation to bats is that the loss of the HPBIE would lead to a loss of foraging habitat for the bats on site. Some HPBIE would remain on site, to a reduced degree, and the site is surrounded by woodland which may potentially provide foraging habitat. However, the appellant has provided no substantial evidence to support a view that this, or the new planting, would provide an acceptable alternative foraging habitat for bats roosting on the site.
33. It is concluded that the proposed development would, in relation to loss of woodland habitat and potential harm also thereby to bats, have a detrimental effect on matters of nature conservation importance. This would conflict with LP Policy C6 and emerging plan Policy DP37 which seek respectively to reduce

the loss of woodland important as a natural habitat and, as required by the Framework, protect and enhance biodiversity.

Absence of Section 106 Agreement

34. One of the reasons permission was refused was the absence of a completed legal agreement to ensure affordable housing on site, in accordance with the Council's requirements, and infrastructure improvements required to make the development acceptable in planning terms.
35. The agreement, had it been complete would have provided 22 affordable dwellings on site along with ensuring its provision and setting out nomination rights. In addition it would, amongst other things, have made financial contributions towards additional school and library space and improvements to various local community facilities. Both parties say that these requirements meet the tests in the Community Infrastructure Levy (CIL) Regulations: that is that they must: be necessary to make the development acceptable in planning terms; be directly related to the development; and be fairly and reasonably related to it in scale and kind. All that I have read and heard suggests that this would be so. This being the case an absence of the means of achieving the above must stand against the proposal.
36. The appellant is critical of the Council for not signing the Agreement, in the absence of mortgagee's signature, saying that the risk of signing the document would be theoretical and unlikely to arise. However, normally all persons with an interest in the land should sign an obligation. Thus I consider the Council's cautious approach to be justified.
37. It is said by the appellant that the absence of a completed agreement may be resolved by imposing a Grampian condition worded as follows: "No development may commence until the developer has confirmed to the planning authority's reasonable satisfaction that all parties with an interest in the land (the subject of the Planning Permission) have completed or are bound by a Planning Obligation under Section 106 of the Town and Country Planning Act 1990 in the same form as the Planning Obligation completed by the parties prior to the Planning Permission being granted".
38. Planning Practice Guidance (PPG) on conditions says that a "it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure). However, I consider that this must be read in light of a later paragraph which expands upon this saying that such conditions are unlikely to be appropriate in the majority of cases. It goes on to say that in exceptional circumstances such conditions may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk.
39. In this case, however, the amount of housing proposed is relatively modest and as such, even though it would assist in providing additional housing in an area where there is an absence of a 5 year housing land supply, it is not of a scale which makes it strategically important. Nor, in terms of the main issues in this appeal, and the necessity to obtain the signatures of all those with an interest in the site, is the case more complex than many other applications. The

wording of the Guidance imposes a high bar on the acceptability of imposing a negative condition to secure a planning obligation and that bar has not been met in this case.

40. It is concluded that the absence of a completed Section 106 Agreement would prevent the financial contributions on infrastructure and affordable housing sought by the Council and should stand against the proposal. This would result in conflict with LP Policies G3, R3, R4 and H4 and emerging plan Policy DP18 which take together require, where appropriate, financial contributions to infrastructure made necessary by the development and affordable housing.

Other 3rd party concerns

41. Given the amount of traffic on the main road past the site additional traffic from development of this relatively modest scale would not be harmful to the living conditions of those nearby through noise and disturbance. On one boundary the proposed development would abut existing housing. However, the distance of the proposed houses from this neighbouring housing, and boundary screening, would prevent any unacceptable loss of privacy. Although the proposal would bring new housing adjacent to existing development I see no reason why this should add to the likelihood of crime. I note that the Police have no major concerns on the proposal. Although there is a major development permitted for housing on the western boundary of Copthorne it is clear that there remains a need for more housing in the District. Whilst I note the concerns about a precedent being created for further housing in the area planning applications should be considered, as I have done in this case, on their own individual merits.

Material considerations in favour of proposal

42. The housing requirement set out in the now revoked South East Plan is no longer relevant. And the Council acknowledges that the objectively assessed housing need figure for the District in the emerging District Plan has yet to be tested through the District Plan examination. As such it is common ground between the parties that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. In these circumstances relevant policies for the supply of housing should not be considered up-to-date according to paragraph 49 of the Framework. Where policies are out of date paragraph 14 of the Framework says that permission should be granted unless 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.
43. A key benefit of the proposed development would be the provision of good quality new housing of a wide mix and type and size. Though in the absence of a legal agreement no means has been suggested whereby the provision of needed affordable housing would be guaranteed. There would be benefits to the local economy from: having more people in the area; the work provided for the construction of the housing; the new homes bonus and additional Council tax receipts. In environmental terms there would be some benefit in having new housing outside any nationally designated areas, such as Areas of Outstanding Natural Beauty. And being on land at least partly containing housing the visual impact would be slightly less than would otherwise be the case. Although poorly located in relation to local facilities other than by car the site is quite well located with regard to the motorway network and rail links for long distance travel.

Final balancing

44. Drawing together my views substantial weight may be attached to the provision of housing, albeit tempered by the absence of an agreed means of guaranteeing the provision of affordable housing. For the reasons set out above there would be some economic benefit to the area, albeit limited given the scale of the proposed development. There would be some modest to slight advantage in environmental grounds from the provision of housing outside nationally designated areas, on land at least partly previously developed, and located reasonably well to the motorway network and rail links. I have found that there would be no harm to highway safety and nor in relation to the third party concerns raised additional to those of the Council. With the absence of a 5 year housing land supply the Council was correct not to have refused permission in principal on the grounds of conflict with LP Policies C1 and C2. Accordingly I attach little weight these conflicts.
45. To set against the above would be the poor location of the site for access to local facilities other than by car. I attach substantial weight to this given the requirement in the Framework on ensuring the use of natural resources prudently, minimising waste and pollution, moving to a low carbon economy and creating a built environment with accessible local services. I also attach substantial weight to the absence of a legal agreement to secure the affordable housing and the financial contributions required to provide additional school and library space along with improvements to various local community facilities. I attach moderate weight to the loss of semi-natural broadleaved woodland, added to which is the potential thereby for the loss of bat habitat. Although I have found the layout and design of the development to be acceptable the proposed flats 58-66 would lead to some, albeit limited, harm to the character and appearance of the area.
46. Weighty though the benefit of new housing would be, and notwithstanding the other more modest benefits referred to, I find that taken overall, and with particular regard to the harms identified in the first and fifth issues, the harm found is of a degree that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the Policies in the Framework taken as a whole.
47. The Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development. It identifies 3 dimensions to such development, an economic role, a social role and an environmental role. From my findings above it is clear that in some respects these roles would be met by the proposed development. However, the harm identified means that there would be conflict with the social and environmental roles to a degree which means that, seen in the round, the proposal would not be sustainable development.

Conclusions

48. For the reason given above it is concluded that the appeal should be dismissed.

R J Marshall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Black MRTPI	Of PRP Planning
Mr A Wittingham BSC Eng MSc CEng MIC	
Mr H Lee	Of Denton Homes
Mr M Jux	Of Amasia Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr S King DipTP MRTPI	Team Leader Planning Appeals
Mr W Dorman BArch BA DipUrb	Urban Design Officer
Mr M Bartle MSc MCILT MCIHT	West Sussex County Council (WSCC)
Mr M Bird BSc Hons MSc MCIEEM	Calex Environmental Ltd.
Mrs E Clarke	Community liason officer
Miss E Munns	WSCC Strategic planning

INTERESTED PERSONS:

Mr G Staines	Local resident
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DOCUMENTS

1. Statement of Common Ground.
2. Extract from Design manual for Roads and Bridges.
3. Dukes Head roundabout improvements.
4. Plan of proposed development with suggested alterations.
5. Proposed pedestrian refuge – hazard identification and risks.
6. LDF inset map.
7. Local facilities and public transport map.
8. Plan extract.
9. Community Infrastructure Levy Regulations.
10. Decision Notice on DM/15/1339.
11. Draft Section 106 Agreement.
12. Suggested conditions.