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## Appeal Decision

Hearing held on 7 July 2016

Site visit made on 7 July 2016

**by Jonathan Manning BSc (Hons) MA MRTPI**

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

**Decision date: 16 August 2016**

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**Appeal Ref: APP/U1430/W/15/3140423**

**Land between Rosemary Lane & Broom Hill, Flimwell, Ticehurst**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Hatch Homes Ltd against the decision of Rother District Council.
  - The application Ref RR/2015/704/P, dated 9 June 2014, was refused by notice dated 16 June 2015.
  - The development proposed is erection of 20 dwellings (inc. 8 affordable) with associated vehicular access, garaging and parking.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The application is made in outline with all matters reserved for future consideration. Whilst all matters are reserved, the application was supported by an indicative site layout plan (J001713/PL03). At the beginning of the Hearing, the appellant provided a Revised Proposed Site Layout Drawing (J001713/PL03 Rev B). Further to this, additional consultation was carried out on the revised drawing and a letter confirming such details was also provided by the appellant. As a result of the additional consultation, I received a number of additional consultation responses from local residents. I set out at the Hearing that I was mindful that the proposal is in outline, with layout reserved for later consideration and the site layout drawing is therefore for indicative purposes only. Further, the appellant has undertaken consultation on the amended plan. Given these matters, I set out at the Hearing that I would have regard to the revised plan (J001713/PL03 Rev B) and the additional consultation responses that were submitted, in determining the appeal.

### Main Issues

3. As a result of the evidence before me and the discussions undertaken at the Hearing, I consider that the main issues of the appeal are:
    - whether the Council can demonstrate a five year housing land supply;
    - the effect of the proposal on the character and appearance of the area, having particular regard to the High Weald Area of Outstanding Natural Beauty;
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- whether the appeal site is sustainably located, in terms of accessibility to local services, facilities and public transport;
- the effect of the proposal on ecological features;
- whether the proposal provides a suitable housing mix;
- whether the proposal is required to make provision for affordable housing and highway improvements; and
- whether the proposal represents sustainable development.

## **Reasons**

### *Housing land supply*

4. At the Hearing, the Council accepted that it cannot demonstrate a five year housing land supply and provided an updated Housing Land Supply and Trajectory Report. This sets out that the Council are of the view that it can demonstrate a housing land supply of 4.6 years. The appellant has not provided any substantive evidence with regard to matters of supply that would make me come to a different conclusion.
5. The appellant is, however, of the view that the Council's shortfall should be made up using the Sedgefield Method rather than the Liverpool Method. This matter was considered in detail during the examination of the Rother Local Plan Core Strategy (2014) (the CS). The examining Inspector concluded that there were specific circumstances within Rother that justified spreading the shortfall over the whole plan period (Liverpool Method) rather than over the next five years (Sedgefield Method). Again, I am of the view that the appellant has not provided any substantive evidence to suggest that I should depart from the view of the examining Inspector. Based on the evidence that I have before me, I conclude that the Council can demonstrate a housing land supply of 4.6 years.
6. The National Planning Policy Framework (the Framework) at Paragraph 49 sets out that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The Council's policies that relate to the supply of housing are therefore out-of-date. In such circumstances, Paragraph 14 of the Framework advises that where policies relating to the supply of housing are considered to be out-of-date, 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 or specific policies in the Framework indicate development should be restricted, which includes policies relating to Areas of Outstanding Natural Beauty (AONB).
7. The appeal site falls outside of any settlement boundary and is therefore considered to be located in open countryside. The proposal for open market, as well as, affordable housing therefore conflicts with Saved Policy DS3 of the Rother District Local Plan (2006) (the LP) and Policies OSS2 and RA3 of the CS. However, I am mindful that these policies relate to the supply of housing and are therefore out-of-date. This conflict therefore carries only limited weight.

### *Character and appearance*

8. The appeal site is located to the west of the village of Flimwell and is a relatively open undeveloped field surrounded by mature hedgerows and trees. The site's formal use is agricultural, although at the time of my site visit, the site was becoming overgrown and did not appear to be in active use. The site levels fall quite sharply away from the highway. Open countryside lies to the north, with scattered ribbon development to the east before the more built up area of Flimwell is encountered. There is scattered ribbon development to the west and built development to the south on the opposite side of the B2087. The appeal site falls within the High Weald Area of Outstanding Natural Beauty (the AONB). The site forms part of a series of historic field boundaries in this part of the AONB that serve to define the medieval pattern of small irregular fields that are interspersed with woodland, which is typical of the High Weald.
9. I agree with the parties that the proposal does not represent major development in terms of Paragraph 116 of the Framework. Nonetheless, I am mindful that Paragraph 115 of the Framework sets out that *'Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty'*.
10. It was evident from my site visit that the appeal site has a clear relationship with the open countryside to the north, particularly when viewed from the B2087. The fall in levels contribute to this, with the land sweeping down from the highway, towards the countryside where attractive medium distance views can be gained. Despite the existing development in the vicinity, most notably to the south, I agree with the Council that the appeal site has a rural context due to its evident relationship with the open countryside to the north. This relationship can also be seen from the Public Right of Way (the PROW) that runs parallel to the eastern boundary of the appeal site. I consider that the appeal site provides a welcome relief to the ribbon development between Flimwell and Ticehurst, which I agree with the Council, is in danger of compromising the gap between the two settlements. It also, in my view, forms an important part of the rural setting of the village when approaching from the west before the more urban confines of the village are encountered.
11. The proposal would result in the construction of 20 dwellings and associated infrastructure. This would radically urbanise the appeal site from a pleasant open field that forms part of the rural setting of the village, with an evident relationship to the open countryside beyond, to a relatively large residential cul-de-sac.
12. The proposal would result in the removal of the mature hedgerow on the southern boundary of the appeal site. This would be replaced by the frontages of 6 dwellings and a detached garage, their associated hardstanding areas and the main vehicular access into the site. There appears from the indicative site layout plan to be limited scope for any significant additional planting on this boundary. Further, the indicative site layout shows at the eastern side of the site that the development would be six dwellings in depth back from the road. This would have the appearance of extending significantly into the open countryside and would not be in keeping with the scattered linear built development on either side, which is limited in depth. This includes the developments opposite the appeal site, which only appear to extend to two

dwelling/buildings back from the road. I did observe other large cul-de-sac residential developments within the wider vicinity, such as that at Bewl Bridge Close, but this is located much closer to the main built up area of Flimwell.

13. Given all of this, I consider that the proposal would unacceptably urbanise the rural setting of the village to its detriment and would result in an overly urban development that would not reflect the grain of development in the immediate area. The proposal would also further compromise the existing gap between the settlements of Ticehurst and Flimwell. For these reasons, the scheme would cause significant harm to the character and appearance of the area and to the special qualities of the AONB. The proposal therefore runs contrary to Policy EN1 of the CS, which (amongst other things) seeks to protect and where possible enhance the District's nationally designated landscapes. The scheme also runs contrary to Paragraph 115 of the Framework. Given that great weight should be given to conserving landscape and scenic beauty in AONBs, this weighs heavily against the scheme.
14. The Council has raised an additional concern with regard to the potential for the proposal to place the mature trees that run along Rosemary Lane under pressure to be felled in the future. I acknowledge that the dwelling within Plot 10 of the indicative site layout would be located very close to the canopy of the Tree identified on the plan as 'T7'. However, I am mindful that both scale and layout are reserved matters and amendments could be made to ensure that there would be a suitable relationship between Plot 10 and the existing trees. This would ensure that there would be no future pressure to fell the trees, which I agree make a significant contribution to the character and appearance of the area. However, this does not overcome my above concerns.

#### *Access to local services and facilities*

15. The village of Flimwell has relatively few local services and facilities. However, Ticehurst, approximately 2 kilometres to the west, does have a wider range of services and facilities. Flimwell is expected to deliver additional dwellings in order for the Council to deliver its housing requirements and therefore I accept that the lack of local services and facilities in Flimwell, should not weigh against the scheme.
16. Notwithstanding this, the appeal site is located some 250 metres to the west of the principal built up area of Flimwell that benefits from footpaths and street lightening along the B2087. The local services and facilities are located approximately 1.1 kilometres to the east of the appeal site along the B2087, with the closest bus stop also being along this route at a distance of some 350 metres. I observed on my site visit that there are no footpaths along the highway surrounding the appeal site and that the walk to the east to gain access to the closest footpath at Bewl Bridge Close (250 metres away) is highly undesirable, as pedestrians have to walk along the relatively busy road, where cars travel at a not insignificant speed. For these same reasons, I also consider that cycling would not be an attractive option.
17. The Highway Authority has not raised any objections. However, their response appears to me, to be dependent on a continuous footpath being provided to the east, to link to the existing footpath at Bewl Bridge Close. I agree that with the provision of such a footpath, safe access on foot could be gained to the local services and facilities and the closest bus stop. At the Hearing, the appellant set out that the scheme proposes to deliver a continuous footpath across the

appeal site frontage only. I accept that this could be secured as part of the development. However, this would not lead anywhere and would not in isolation provide a safe walking route to the local services and facilities.

18. As part of the site visit, I walked the route where the continuous footpath to the east would need to be provided and it was evident that it is highly unlikely to be feasible. It is evident that permission from several landowners would be required and I am not convinced that a footpath of suitable width could run alongside Ivy Cottage, which is located close to the road. In any event, no mechanism has been provided as part of this scheme to secure the footpath along the 250 metre stretch of highway.
19. I consider that in the absence of any such footpath, the occupants would be isolated from local services and facilities and public transport. I am of the view that future occupants would be entirely reliant upon a private motor vehicle for their day to day needs. This runs contrary to Policy TR3 of the CS, which seeks to ensure that new developments minimise the need to travel and support good access to employment, services and community facilities. This also weighs heavily against the proposal.
20. I acknowledge that other housing developments have relatively recently been permitted by the Council opposite the appeal site, which the appellant asserts sets a precedent for the scheme. However, I understand that these developments were located on previously developed land and therefore had different circumstances. Consequently, this does not affect my above findings on this main issue.

#### *Ecological features*

21. The scheme would result in the removal of mature hedgerows at the front of the site, which do provide some habitat and the supporting Ecological Assessment considers these to be of local importance. The Ecological Assessment makes a number of recommendations to ensure that the scheme would be suitable in ecological terms. I consider that ecological enhancements, the recommendations of the Ecological Assessment and any necessary mitigation could be secured by planning conditions. This was accepted by the Council at the Hearing. Consequently, I consider that with the imposition of appropriate planning conditions, the proposal would not cause any unacceptable harm to ecological features, as any habitat loss could be mitigated by enhancement measures within the scheme, which could be agreed and secured at the reserved matters stage. I therefore find no conflict with Policy EN5 of the CS. This matter does not therefore weigh against the proposal.

#### *Housing mix*

22. The Council has raised concerns with regard to the housing mix and the distribution of the affordable housing units within the site, as set out within the indicative site layout. In response to these concerns, the appellant provided a revised Proposed Site Layout Drawing (J001713/PL03 Rev B), which distributes the affordable units more evenly through the site. The Council accepted that this addressed its concerns in that regard, but still maintain concern with regard to the number of 4 and 5 bedroom open market dwellings proposed on the site. I share these concerns. However, I am mindful that layout is a reserved matter and the housing mix could be altered to address these

concerns. Further, both parties agreed that a condition could be imposed to secure a suitable housing mix. As a result, I consider that this matter can be suitably dealt with by a planning condition, which would ensure compliance with Policies LHN1 and LHN2 of the CS. This matter should not therefore weigh against the scheme.

*Affordable housing and highway improvements*

23. At the Hearing the appellant provided a signed and dated Unilateral Undertaking (UU). This seeks to make provision for affordable housing and highway improvements. At the Hearing, the Council raised a number of concerns in relation to the UU. I share many of these concerns, most namely that the UU makes reference to Plans, but none have been included. I therefore agree with the Council that the UU, as submitted, cannot be relied upon to secure affordable housing or the sought highway improvements. The appellant has not contested the need to provide for affordable housing or highway improvements. Notwithstanding this, I am mindful that I am dismissing the appeal on other grounds and therefore such matters do not affect my overall conclusion and have therefore not had a significant bearing on my decision.

*Sustainable development?*

24. The Government is seeking to significantly boost the supply of housing, as set out in Paragraph 47 of the Framework. Further to this, the Framework at Paragraphs 14 and 49 identifies that there is a presumption in favour of sustainable development. The Council cannot currently demonstrate a five year housing supply and therefore its policies that relate to the supply of housing are out-of-date. The weight to be given to the conflict with Saved Policy DS3 of the LP and Policies OSS2 and RA3 of the CS is therefore limited. In these circumstances, Paragraph 14 of the Framework provides the decision making context. The site lies within the AONB and I have found that the proposal would cause harm in this regard. Consequently, I consider that the 'tilted' balancing exercise in this case does not apply, which was accepted by the appellant at the Hearing.
25. There are three strands to sustainable development: social, economic and environmental. Turning firstly to the benefits of the scheme, it would deliver 20 new dwellings, including 8 affordable units. This would deliver a notable social benefit, taking into account the Council's current housing land supply position. Although, I am mindful that the Council's shortfall of some 0.4 years is not excessive and to some degree lessens the weight that can be afforded to the benefit of the additional housing. I acknowledge that Flimwell is expected to deliver up to 44 dwellings in the future over the CS plan period, up to 2028. I understand that there is an existing commitment of one dwelling and permission has been granted recently for developments at Land at Corner Farm for 25 dwellings and Land at Wardsdown for 9 dwellings. Both permissions are subject to the completion of legal agreements. The Council expect these dwellings to be delivered in the next 5 years and I see no reason to take a different view. This leaves a balance of 9 dwellings to be delivered by 2028, within Flimwell. The Council has set out that the Strategic Housing Land Availability Assessment (SHLAA) has identified another site for up to 17 dwellings at Land at r/o Fruitlands, High Street, which is expected to become available in 6-10 years. In addition, I understand that whilst at a very early

stage and therefore attracting limited weight, the emerging Neighbourhood Plan is also considering potential housing sites. Consequently, I consider that it is reasonable to believe that 9 dwellings could be provided by 2028 in Flimwell, without the need to develop the appeal site.

26. Overall, given the above, I afford moderate weight to the social benefit of the new housing. There would also be some economic benefits, but these would be relatively modest, but nonetheless weigh in favour of the scheme.
27. On the other hand, there would be harm in the environmental dimension. I accept that the Council will need to allow new residential development within the AONB to meet its housing needs. However, this proposal would cause demonstrable harm to the character and appearance of the area and to the special qualities of the AONB. The appellant has referred me to numerous other appeal decisions to demonstrate that housing development within AONBs can be acceptable where there is an identified need. However, these decisions relate to other proposals on other sites, with differing circumstances in terms of scale, location and overall benefits. As a result, I afford them limited weight and I am mindful that whether a development constitutes sustainable development is a matter of balance that is very much specific to the merits of each development. The scheme would also be isolated, by sustainable modes of transport, from local services and facilities and public transport. Future occupants would be entirely reliant on a private motor vehicle. Both of these matters weigh heavily against the proposed development.
28. In conclusion, the identified harm in the environmental dimension is not outweighed by the benefits of the scheme in the social and economic dimensions. Consequently, the proposal does not comply with the Framework when taken as a whole and therefore does not constitute sustainable development.

#### *Other matters*

29. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

#### **Overall Conclusion**

30. For the reasons set out above and having regard to all other matters raised, the scheme does not represent sustainable development and therefore the appeal is dismissed.

*Jonathan Manning*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Barry Osborn  
Brian Woods

Hatch House Ltd (Appellant)  
WS Planning & Architecture

### **FOR THE LOCAL PLANNING AUTHORITY:**

Jo Edwards  
David Marlow  
Kate Barnes

Rother District Council  
Rother District Council  
Rother District Council

### **INTERESTED PARTIES**

Steve Barrass

Martin Causer  
Paul Halden  
Marilyn Halden

Ticehurst Parish Council &  
Neighbourhood Plan Steering Group  
Local Resident  
Local Resident  
Local Resident

## **DOCUMENTS PROVIDED AT THE HEARING**

1. Revised Proposed Site Layout Drawing (J001713/PL03 Rev B) and associated consultation letter, submitted by the appellant.
2. Signed and dated Unilateral Undertaking, dated 5 July 2016, submitted by the appellant.
3. Housing Land Supply and Trajectory (1 October 2015), submitted by the Council.
4. Cabinet Report: Local Plan Housing Monitoring – Update (Dated 6 June 2016), submitted by the Council.
5. Appeal Decision APP/U1430/W/15/3135953, dated 22 March 2016, submitted by the Council.
6. Details of Development at Berners Hill garage, High Street, Flimwell, including Appeal Decision APP/U1430/A/00/1053288, dated 22 February 2001, submitted by the Council.
7. Bundle of historical maps of the area, submitted by the Council.
8. Information in relation to housing completions in England, supplied by the Parish Council.
9. Ticehurst Parish Neighbourhood Plan: Place Summary Plan (February 2016), submitted by the Parish Council.