



Appeal Decision

Site visit made on 28 November 2016

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 28 December 2016

Appeal Ref: APP/M3645/W/16/3153733

11a Crawley Down Road, Felbridge, East Grinstead RH19 2NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Persimmon Homes against the decision of Tandridge District Council.
 - The application Ref TA/2014/25, dated 23 December 2013, was refused by the Council by notice dated 8 April 2016.
 - The development proposed is demolition of 11a Crawley Down Road. Erection of 32 new dwellings and associated infrastructure.
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Decision

1. I allow the appeal and grant planning permission for demolition of 11a Crawley Down Road, the erection of 32 new dwellings and associated infrastructure at 11a Crawley Down Road, Felbridge, East Grinstead RH19 2NT in accordance with the terms of the application, Ref TA/2014/25, dated 23 December 2013, subject to conditions 1) to 9) on the attached schedule.

Main Issues

2. These are;
 - The effect of the development on the highway network.
 - The effect of the development on the Ashdown Forest Special Protection Area and the Special Area of Conservation.

Reasons

Preliminary Findings

3. The application as described in the heading above was for 32 new dwellings, following demolition of the dwelling at 11A Crawley Down Road. In fact, the same application had been made to both Tandridge District Council and Mid Sussex District Council as the complete site falls across both Councils' jurisdictions. The front of the site including number 11A and a single replacement dwelling, together with the access onto Crawley Down Road falls within the Tandridge District Council area, whereas the remaining 31 dwellings are sited to the rear within the Mid Sussex District Council area.
 4. Mid Sussex District Council had resolved on 26 June 2014 to grant permission for the development within their area of jurisdiction (Ref; 13/04364/FUL). The Officer's report to Tandridge Planning Committee on 7 April 2016 contained the advice that previous uncertainties over Mid Sussex's measures to address the
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Ashdown Forest Special Protection Area had been resolved. At paragraph 16 the Officers further advised that Mid Sussex had not yet issued the decision as the applicant had not completed a section 106 agreement because they did not have the necessary permission from Tandridge.

5. In a section entitled '*Principle of Development and Green Belt*' the Report advised that the proposal under consideration by Tandridge District Council is for the replacement of an existing bungalow with a house which is not inappropriate development and no objection is raised to the formation of the access in Green Belt terms. That appraisal is concurred with now.
6. The key matters for consideration were stated to be the highways implications of the proposed access, and the impact of the single dwelling together with the access on the character of the street-scene and the amenities of neighbouring properties. The Officer recommended that there were no adverse effects on the latter, and taking into account the nature of the nearby properties and the existence of a gap in the frontage with an access drive to the west, that opinion is also concurred with now.
7. The Officer was of the view that there were no adverse Highway impacts, but that view was not shared by the elected Members who resolved to refuse permission on highway grounds, and that is the first main issue as set out above.
8. Notwithstanding the advice that the matter for consideration by Tandridge was a one-for-one replacement and therefore did not present an additional risk to the Ashdown Forest through additional residents, the Committee also resolved that it had not been demonstrated that the development would adequately manage the potential effect of the new development on the wildlife and conservation considerations of the Ashdown Forest Special Protection Area, Special Area of Conservation and Site of Special Scientific Interest. That is therefore the second main issue as set out above.

Policy Background

9. With regard to the highway issue, the reason for refusal refers to paragraph 32 of the National Planning Policy Framework which states that all developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether: the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure; safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. The guidance concludes by stating that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
10. On the matter of the Ashdown Forest, Policy CSP17 of the Tandridge District Core Strategy 2008 on Biodiversity states that development proposals should protect biodiversity and provide for the maintenance, enhancement, restoration and, if possible, expansion of biodiversity, by aiming to restore or create suitable semi-natural habitats and ecological networks to sustain wildlife in accordance with the aims of the Surrey Biodiversity Action Plan. The Council will seek to enhance biodiversity by supporting the work of the Downlands

Countryside Management Project and by supporting Local Nature Reserves and Community Wildlife Areas.

11. Policy DP19 of the Tandridge Local Plan: Part 2 Detailed Policies 2014, states a presumption in favour of promoting nature conservation among other things, and proposals will be refused where significant harm to local, national or statutory sites would occur, unless justified as set out in the Policy. Sites of Special Scientific Interest and priority species will be protected from direct or indirect harm.
12. The Council refer also to the Conservation (Natural Habitats, etc) Regulations 1994 and to Paragraph 118 of the Framework which lists principles for conserving and enhancing biodiversity including protected species and sites. Paragraph 119 of the Framework states that the presumption in favour of sustainable development in paragraph 14 does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

Highways

13. Whilst the Tandridge jurisdiction is with regard to a single replacement dwelling, the access for the full 32 dwellings, a net increase of 31 dwellings, is within this Council's jurisdiction. The Officers had put forward the advice of the Surrey County Highway Authority and had provided a commentary on why there were apparent discrepancies in speed survey data. The conclusion of the Highway Authority was that visibility distances are adequate for the speeds recorded. The formal Appeal site inspection was carried out during the school pick-up time, at 1500hrs, but unaccompanied observations had been carried out for an hour prior to that and without significant parking near the school, and hence while traffic was more free-flowing near the site entry.
14. Odyssey Markides drawing 12-164-009 shows the location of the speed surveys, and these differ from those referred to as having been taken previously which were further west. The present locations would give an accurate measure of speeds approaching from the east where there is a free-flowing left turn off the A264, and those approaching from the west where speeds would be reducing for the A264 priority junction. On the information available, the access would have the required sightlines and the proposal to control parking nearby would assist the situation seen at school pick-up time as well. In addition the proposal to introduce a kerb build-out to the south channel of Crawley Down Road at the left-turn from the A264 would slow traffic approaching from the east, as the present free-flowing route westbound would be reduced.
15. The appellant draws attention to the reason for refusal being identical to one used for a 200 dwelling scheme to the south of East Grinstead at Hill Place Farm (Mid Sussex Ref; DM/15/0429) and queries how this could apply to a 31 net dwelling scheme in a different location and with such a difference in scale. Reference is made to paragraph 32 of the Framework and the statement that development should only be prevented or refused on transport grounds where the residual cumulative impacts of *development* are severe, and not whether existing highways conditions are considered to be severe. The appeal scheme is not of a size that requires a Transport Statement or a Transport Assessment, stated in the Framework to be required for development that generates *significant* amounts of movement. That approach is confirmed in the web-

based Planning Practice Guidance (Paragraph 002 Reference ID: 42-002-20140306), which states that Travel Plans, Transport Assessments and Statements are all ways of assessing and mitigating the negative transport impacts of development in order to promote sustainable development. They are required for all developments which generate significant amounts of movements. That is not the case here.

16. It is not disputed that the Felbridge junction of the A264 and A22 is subject to peak time congestion, but the development will add only 8 vehicles to the flow of traffic in the morning peak and 9 in the afternoon peak, against a background of 2,500 vehicles in a peak hour. The appellant's conclusion that this is not a significant increase is concurred with now. On that analysis it is not for this development to deliver improvements to mitigate an already existing situation. That stance is agreed with by both the Surrey Highway Authority and that in West Sussex.
17. In particular Surrey stated in response to the application that they *'acknowledge that the A264/A22 junction is operating over capacity at certain parts of the day, as do many junctions in the County. This in itself is not a reason to resist development, as there are existing problems and issues with the junction and the percentage impact of any given development is assessed on an individual basis. On larger Transport Assessment sized schemes an 'on balance' judgement has to be made on all aspects of a planning application, of which the capacity of one junction plays a part. Any mitigation brought about by development needs to be directly related to the proposed development and at a proportionate scale. New development cannot be made to entirely mitigate against [sic] existing issues on the transport network and the impact of development must be considered severe in order to justify any reason for refusal.'*
18. In fact the appellant is offering funding towards improvements identified by Surrey County Council, although the consultant employed to put the Council case expresses the view that as these will assist pedestrians, they will actually slow traffic. Be that as it may, with a junction that is already under pressure, improvement of pedestrian safety appears a reasonable objective.
19. There are clearly issues about congestion caused at school collection, and presumably drop-off times, and inconsiderate parking was seen to impede bus movements and the length of queue to turn left out of Crawley Down Road, causing delays through some conflicting traffic movements past parked vehicles. The proposed extension of restrictions would assist this in any event, and the level of additional traffic would have little impact in the morning and less still in the afternoon school times.
20. The acute angle of the junction of Crawley Down Road and the A264 is a pre-existing feature and traffic eastbound on the main road did not always leave the box junction clear for emerging traffic. That box junction could also serve to allow the more difficult right turn towards Crawley, where it is clear that emerging westbound vehicles may need to swing over the eastbound carriageway. It appears from observation that some traffic seeking that westbound direction makes use of the more built-up but shorter route along Rowplatt Lane.
21. There has been representation from a business use adjoining the site as to the difficulty of their large vehicles making this left turn from Crawley Down Road

onto the A264. That difficulty is a pre-existing situation and it is apparent from observations that this turn would be awkward. There is however, no indication that the additional traffic from the scheme would significantly alter the situation. The appellant has shown that were the kerb build-out to go ahead, there would be no adverse effects on swept paths and it appears likely that it would slow traffic approaching from the east and give them a better view of any large vehicle making the turn and possibly encroaching on their carriageway.

22. The site is in a sustainable, accessible location with buses passing the site and more frequently passing along the A264 linking the site with employment, transport and retail provision at East Grinstead and Crawley. It would be possible to make many trips without recourse to the private vehicle, in line with Government policy. One of the core planning principles set out in the Framework is to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.
23. To conclude on this issue, the effects of the development are not severe and in accordance with the guidance in paragraph 32 of the Framework, the development should not be prevented or refused on transport grounds.

Ashdown Forest

24. The site is within 7km of the Ashdown Forest Special Protection Area and the Special Area of Conservation and the Conservation of Habitats and Species Regulations 2010 require that the scheme is considered both alone and in combination with other plans and projects. The Inspector is the 'competent authority' for a transferred appeal, as is the case here. Consequently before granting permission for any development that may affect a protected site, there is the need to undertake a Habitats Regulation assessment of the impact of the development. Circular 06/2005, "*Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System*" details the steps to be taken to undertake a Habitats Regulation assessment when considering a planning application such as this which affects European sites. The steps are set out in a flowchart in Figure 1:
25. *Step 1, is the proposal directly connected with or necessary to the management of a protected site?* This is not the case here and so step 2 has to be considered.
26. *Step 2, is the proposal likely to have a significant effect on the interest features of the site, alone or in combination?* The Council has stated in the Officer's Report that the site is within 7km of a designated site and that increased population, traffic fumes and domestic animals would risk causing harm.
27. *Step 3, due to the finding above, an 'Appropriate Assessment' needs to be carried out.* The Council has undertaken such an assessment and from the information available, there would be adverse effects from additional visitors to the Heathlands, the site being near enough for them to form a recreational resource for the occupiers. It is not possible to rule out the possibility of a significant adverse effect from the additional residents on the site as a whole, when taken in combination with other developments, which should reasonably include that on the Mid Sussex land, on the integrity of the Special Protection Area.

28. *Step 4, since adverse effects have been identified, can they be mitigated or overcome by conditions or other restrictions such as a section 106 agreement or undertaking?* Whilst the Tandridge site has no increase in dwellings, the previous delay in the Officers being able to put forward a positive recommendation centred around the lack of a legal agreement between Mid Sussex and the conservators of the Ashplats open space/Suitable Alternative Natural Greenspace. That legal agreement was signed prior to the 26 June 2014 Committee meeting where Officer's reported that in view of this issue being resolved the application was recommendation for approval. This agreement provides the necessary mechanism for levying a charge on developers of new housing to fund the management of land as Suitable Alternative Natural Greenspace. The Report also details the agreement of December 2015 between the Conservators of the Ashdown Forest and three Councils which include Tandridge. That appears an acceptable approach to ensuring that harm is not caused to the Ashdown Forest Special Protection Area and the Special Area of Conservation.
29. In light of this and the fact that mechanisms are apparently in place to protect the sites, there is no need to look further at the flowchart, but subject to the comments that follow.
30. The Council have provided copies of Appeal Decisions in Mid Sussex that found against the proposals through doubts over the ability to provide Suitable Alternative Natural Greenspace (Refs; APP/D3830/A/13/2207529, 2202266 and 2211981). It appears that these three Appeals were heard in a joint session with regard to the Ashdown Forest issues, and the Decisions were all dated in early March 2015. However, in the present case there is more up-to-date information and the ultimate decision on whether the net increase in dwellings, and hence the increased risk of harm to the protected areas, goes ahead lies with Mid Sussex. Whilst the assessment under the 2010 Regulations has to consider the Tandridge part of the scheme both alone and in combination with other plans and projects, the single house would not cause additional adverse effects and the 31 further dwellings rely on Mid Sussex Council as the competent authority.
31. On the information available, it is concluded that the provisions in place satisfy the requirements of Policies CSP17 and DP19, paragraph 118 of the National Planning Policy Framework 2012 and statutory requirements.

Planning Balance

32. Having mind to the amount of development directly controlled by Tandridge Council in the terms of the first main issue on the Ashdown Forest Special Protection Area, and the control exercisable over access for the entire development, the proposals are acceptable and adverse effects can be avoided or mitigated as appropriate, subject to conditions, for which a commentary follows.
33. The development would provide housing in an accessible location and would further the aims of sustainable development, being land in the right place to support growth as the economic role, it would supply housing required to meet the needs of present and future generations as the social role, and would assist in mitigating climate change through the ability to make use of public transport. Whilst not benefitting from the presumption in favour of sustainable

development, these considerations carry weight in the planning balance, which is concluded to be in favour of allowing the development.

Conditions

34. The Council has suggested conditions on materials, access, photovoltaic provision, parking and turning, a construction transport management plan and flood prevention measures. These provisions appear reasonable and necessary, although the degree to which routing of vehicles off site can be controlled will need to be agreed between the appellant and the Council. A Grampian condition is suggested to secure the build-out at the Crawley Down Road/Copthorne Road junction and this is the correct way to secure this work. The suggestion that it be permanently maintained in accordance with the approved details is not applicable to these off-site works.
35. Lastly a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.

Conclusions

36. The proposals accord with Development Plan and national planning policy, and mitigation can avoid or control the effect on the Ashdown Forest Special Protection Area and the Special Area of Conservation. The highway impacts are not severe or of a significance that would indicate that as a reason to refuse permission. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: pl 13-048-202B, 304B, 305B, 306B, 73B, 54B, 55B, 07B, 08B, 09B, AND 12-164-003H.
- 3) No development shall commence until details and samples of materials to be used on the external faces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details.
- 4) Before any other operations are commenced, the proposed vehicular access to Crawley Down Road shall be constructed and provided with visibility zones in accordance with the approved plans (drawing no 12-164-003H) to be permanently maintained to a specification to be agreed

in writing by the Local Planning Authority and the visibility zones shall be kept permanently clear of any obstruction.

- 5) Prior to the occupation of the dwellings hereby permitted the photovoltaic provision specified in the application details shall be installed and this system shall thereafter be retained in accordance with the approved details.
- 6) The development shall not be occupied unless and until the proposed kerb build out at the Crawley Down Road/Copthorne Road junction and the proposed road markings on Crawley Down Road have been constructed and implemented in accordance with as scheme to be submitted to and approved in writing by the Local Planning Authority.
- 7) The development shall not be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. The parking/turning area shall be used and retained exclusively for its designated purpose.
- 8) No development shall start until a Construction Transport Management Plan to include details of:
 - a) Parking and turning for vehicles of site personnel, operatives and visitors
 - b) Loading and unloading of plant and materials
 - c) Storage of plant and materials
 - d) Programme of works (including measures for traffic management)
 - e) HGV deliveries and hours of operation
 - f) Routing for construction vehicles
 - g) Measures to prevent the deposit of materials on the highway
 - h) Measures to prevent deliveries at the beginning and end of the school dayHave been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction period.
- 9) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (ref 12-164 by Odyssey Markides Aug 13) and the following mitigation measures detailed within the Assessment:

Limiting the surface water run-off generated by the 1 in 100 Climate Change critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site.

Mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may be subsequently agreed in writing by the Local Planning Authority.