
Appeal Decision

Site visit made on 2 February 2017

by AJ Steen BA (Hons) DipTP MRTPI

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

Decision date: 24/03/2017

Appeal Ref: APP/C3810/W/16/3155330

Land south and west of Barnside, Hook Lane, Westergate, Aldingbourne PO20 3TE

- 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 Whitgift Estates against the decision of Arun District Council.
 - The application Ref AL/8/16/OUT, dated 25 January 2016, was refused by notice dated 16 May 2016.
 - The development proposed is residential development of up to 14 dwellings and associated works (including access, landscaping and open space).
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Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 14 dwellings and associated works (including access, landscaping and open space) at land south and west of Barnside, Hook Lane, Westergate, Aldingbourne PO20 3TE in accordance with the terms of the application, Ref AL/8/16/OUT, dated 25 January 2016, subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline with all matters reserved. I have dealt with the appeal on that basis, treating the site layout plans, floorplans and elevations as illustrative. The access, appearance, layout, scale and landscaping (the reserved matters) are reserved for consideration at a later stage.
3. I note that the draft Arun District Local Plan has been submitted for examination but I am not aware of the exact stage it has reached or whether the policies concerned will be considered as consistent with the National Planning Policy Framework (the Framework). Consequently, I am only able to give it limited weight in my decision.
4. During the course of the appeal, the Aldingbourne Neighbourhood Development Plan (ANDP) passed a referendum and was adopted. I will consider relevant policies further in my reasoning below.

Main Issues

5. The main issues are:
 - the effect of the proposed development of up to 14 dwellings on the character and appearance of the surrounding area; and
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- whether the proposal makes adequate provision for any additional need for affordable housing and infrastructure arising from the development.

Reasons

Character and appearance

6. Hook Lane runs from the centre of the village of Westergate and out to the surrounding countryside, heading away from the village centre before turning north past the appeal site. The section past the site comprises a mix of predominantly detached bungalows and two storey dwellings fronting the road. To the opposite side of the road the dwellings currently back onto an open area, but planning permission has been granted for a substantial residential development in this location, with an access formed by the removal of a dwelling on the opposite side of the road to the site¹. The site itself is a largely flat open area, with a number of single storey disused buildings located toward the rear of the site and close to the adjacent dwelling, Barnside.
7. The indicative drawings show a development comprising five dwellings on the site frontage with a new vehicular access toward the centre of the plot and offset from the access to the new development opposite. To the rear of those frontage dwellings, the drawings suggest a further nine dwellings fronting the access road, with five houses backing onto the neighbouring nursery before the access road turns and four houses in the position of the existing buildings backing onto the fields to the rear. The drawings indicate an area of open space, with vehicle turning head to the rear.
8. I understand that, since submission of this appeal, the Council have approved an alternative outline application for up to eight dwellings² on the site. Illustrative drawings relating to that development suggested a similar layout of five dwellings to the front of the site, with a further three in a similar position to the four dwellings at the rear of the site. However, no dwellings were shown in that scheme to back onto the neighbouring nursery.
9. The illustrative layout proposes dwellings that would reflect the size of dwellings along Hook Lane. Whilst these would have smaller gardens than most dwellings on this side of the lane, the illustrative layout suggests that there would be areas of open space, including retention of the pond and an ecological buffer zone, which would reduce the density of the development and provide a more open character. Whilst I accept that the density of the development would be greater than the approved scheme, it would not appear materially different to that of surrounding development and the open areas would ensure a gradual transition from urban development to the surrounding countryside.
10. The proposed development would require a new access that would lead to the dwellings at the rear of the site and would reflect the approved access between houses to the opposite side of the road serving the development to the rear of those houses. Whilst there are no other similar accesses on this section of Hook Lane, this access would be provided in a similar location to the alternative development for eight dwellings. As such, when viewed from the road the appearance of the proposal subject of this appeal is unlikely to materially differ from that approved and would reflect that of the access opposite.

¹ Planning appeal reference APP/C3810/A/2220943

² Arun District Council reference AL/83/16/OUT

11. I accept that the site is not contained by residential development in the same way as the development site over Hook Lane, given that there is no residential development to two sides of the proposed development. However, the site is well contained by planted boundaries and contains existing buildings toward the rear that give the appearance of being within the village. The site is viewed in the context of the development along Hook Lane from over the fields to the rear, with development within the village in the background. As a result, it has the appearance of open space on the edge of the village and the additional development proposed would not have a materially greater impact than that proposed in the smaller scheme.
12. The neighbouring nursery contains very substantial glasshouses located across an open area from the site. Whilst large, these are relatively low structures of different character and appearance to residential development in the vicinity and that proposed.
13. For these reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. As such, it would not conflict with Policies GEN7 of the Arun District Local Plan (LP) or Policies H1 and H3 of the ANDP that seek to ensure development is of a high quality design and layout, including making efficient use of land, of a density appropriate to its location and reflecting the local character.

Affordable housing and infrastructure

14. The planning application was refused due to the lack of legal agreements relating to contributions toward affordable housing provision, public open space or children's play equipment and local infrastructure. During the course of the appeal an executed legal agreement under Section 106 of the Town and Country Planning Act 1990 was submitted that seeks to overcome those reasons for refusal.
15. The legal agreement confirms that contributions would be put toward:
 - Additional equipment to support primary, secondary and sixth form education within schools serving the proposed development;
 - Provision of a "Tier 7" library facility within a community space close to the appeal site that would serve the proposed development;
 - The supply and installation of smoke alarms to vulnerable persons within the parish of Aldingbourne to reduce the demand on the West Sussex Fire Rescue Services Southern Area equivalent to the number of dwellings to be provided;
 - Making good a deficiency in public open space provision arising from the proposed development that would be located close to the site at Olivers Meadow, Aldingbourne; and
 - Provision of two units of affordable housing on site or after an agreed period a commuted sum equivalent to the provision of two affordable dwellings to be paid to the local planning authority, in accordance with the Council's Interim Affordable Housing Policy.
16. For these reasons, I conclude that the contents of the Unilateral Undertaking relating to affordable housing and other infrastructure are necessary, directly

related to the development, and fairly and reasonably related in scale and kind as required by Regulation 122(2) of the CIL Regulations.

17. Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) restricts the use of pooled contributions toward items that may be funded via CIL. If five or more obligations for a project or type of infrastructure have been entered into since 6 April 2010 and it is a type of infrastructure that is capable of being funded by CIL, no more contributions may be collected toward that project. No information has been provided regarding the number of contributions toward the deficiency in public open space to be provided at Olivers Meadow. For this reason, I am unable to take this contribution into account in coming to my decision. Supporting documentation regarding contributions toward education, library and fire services provision confirm that, where those contributions relate to the provision of infrastructure, there would be less than five contributions including these and I have taken these into account in coming to my decision, along with the provision of affordable housing.

Other matters

18. My attention has been drawn to concerns regarding the additional traffic, including construction traffic, using Hook Lane. The details of the access are a reserved matter to be determined at a later stage, but there is no evidence presented that adequate access could not be provided in this location or that the additional traffic relating to this development would lead to harm to highway safety.
19. I understand that there are limited services within the village and that residents may be reliant on the private car. However, paragraph 55 of the Framework confirms that housing should be located where it will enhance or maintain the vitality of rural communities and that development in one village may support services in a village nearby.
20. I note that there have been a number of other residential developments within this village such that there may not be a shortage of houses within the village. However, the Council have confirmed that there is not a five year supply of deliverable housing sites within the district and, as such, relevant policies for the supply of housing should not be considered up to date in accordance with paragraph 49 of the Framework.
21. Reference has been made to conflict with the recently adopted ANDP (Policy EH1) and the LP in terms of policies restricting the provision of housing outside identified built up area boundaries. However, the Written Ministerial Statement of 12 December 2016 confirms that where there is a lack of housing supply, policies within recently made neighbourhood plans such as the ANDP cannot be considered up to date where they do not allocate sites for housing. Consequently, and in accordance with the conclusions of the Council in determining the alternative development for eight dwellings, those policies cannot be considered up to date. As such, I have considered the appeal in the light of the presumption in favour of sustainable development set out in paragraph 14 of the Framework.
22. Sustainable development has three dimensions that must be considered together, being economic, social and environmental. In this case, there would be limited economic benefits during the construction of the development and

future residents would support local services and facilities, even taking into account my conclusions regarding contributions relating to public open space. The provision of dwellings would have a positive social impact to meet the needs of current and future residents. I have concluded that the development would not harm the character and appearance of the surrounding area and have not identified any other environmental harm. As a result, I conclude that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

Conditions

23. I have attached conditions limiting the life of the planning permission and setting out requirements for the reserved matters in accordance with the requirements of the Act. I have imposed a condition specifying the relevant drawings as this provides certainty.
24. A condition is necessary to provide, prior to development commencing, a construction method statement to ensure the development works take place without undue disturbance to neighbouring occupiers and to maintain highway safety. Conditions relating to contamination are necessary in order to ensure contamination does not affect future residents of the development, neighbouring occupiers or the environment.
25. A condition is necessary for a programme of archaeological work prior to development commencing as the site is in an area of archaeological significance. Conditions are necessary to protect trees and their roots on and around the site in order to maintain the character and appearance of the area. Conditions relating to visibility splays and Road Safety Audit are necessary to ensure adequate access into the site and to protect highway safety. A condition requiring provision of a fire hydrant is necessary for the safety of future residents.
26. A condition is necessary to ensure the development proceeds in accordance with the measures contained within the Ecological Appraisal by FPCR in order to protect the ecology and biodiversity of the site. The additional requirement relating to demolition of the buildings is not necessary as these repeat requirements in the Ecological Appraisal. Details of any lighting are necessary to protect ecology and biodiversity and the living conditions of occupiers of surrounding dwellings.
27. A condition is necessary, prior to development commencing, relating to sewerage disposal to ensure this does not lead to pollution of the environment or harm to neighbouring occupiers. Conditions requiring details and implementation of a surface water drainage system are necessary in order to reduce the impact of the development on flooding and manage run-off flow rates.
28. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity. I have not included a condition requiring the access to be provided prior to first occupation as this can be dealt with alongside the access reserved matter.

Conclusion

29. For the above reasons and taking into account all other matters raised I conclude that the appeal should succeed.

AJ Steen

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1265-X01-C Site Location Plan as Existing, 1265-X02-C Topographical Survey as Existing & Demolition, B/1030-16 Tree Protection Plan Phase 1 and B/1030/16 Tree Protection Plan Phase 2.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the anticipated number, frequency and types of vehicles used during construction;
 - ii) the method of access and routing of vehicles during construction;
 - iii) the parking of vehicles of site operatives and visitors;
 - iv) loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development;
 - vi) the erection and maintenance of security hoarding;
 - vii) wheel washing facilities and other works required to mitigate the impact of construction upon the public highway;
 - viii) measures to control the emission of dust and dirt during demolition and construction, lighting for construction and safety;
 - ix) details of public engagement both prior to and during construction works.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 6) Prior to the commencement of development, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
 1. A preliminary risk assessment which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;

- a conceptual model of the site indicating sources, pathways and receptors; and
 - potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on 1, to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 3. The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in 3 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented as approved.

- 7) Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
- 8) If during development contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the local planning authority, for an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.
- 9) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
- 10) No development including site access, demolition or associated construction activities, shall take place on the site unless and until the tree retention & protection scheme as contained within the submitted Arboricultural Method Statement by Beechdown (Ref B/0130/16) (April 2016) has been implemented for all retained trees including trees whose root protection areas fall within the construction zone from neighbouring land. All tree protection works shall be in accordance with BS 5837:2012 "Trees in relation to construction".
- 11) If any root structures with a diameter over 25mm are exposed during the excavation of the foundations for the new dwelling then these should be retained unless otherwise agreed in writing with the Local Planning Authority. Any removal of roots over 25mm in diameter that has been agreed with the

- local planning authority shall then be carried out under the supervision of the Council's Arboricultural Officer.
- 12) The plans and details submitted in relation to the access reserved matter shall incorporate the recommendations given in the Stage 1 Road Safety Audit and accepted in the Designers Response.
 - 13) No part of the development shall be first occupied until visibility splays of 2.4 metres by 47 metres to the north and 2.4 by 49 metres to the south have been provided at the site vehicular access onto Hook Lane in accordance with drawings approved under the access reserved matter. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level.
 - 14) Prior to the first occupation of any dwelling forming part of the proposed development a fire hydrant of a type and in a location submitted to and approved in writing by the local planning authority to BS 750 standards or stored water supply and arrange for their connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of firefighting. The fire hydrant shall thereafter be maintained as part of the development.
 - 15) The development must be carried out in accordance with the recommendations and mitigation measures as set out within sections 4.0 and 5.0 of the FPCR Ecological Appraisal dated January 2016. In addition, any works to the trees or clearance of vegetation on the site shall only be undertaken outside of the bird breeding season which takes place between 01 March and 01 October. If works are required within this time then an ecologist shall be instructed to check the site at least 34 hours prior to any works taking place. Any enhancements and mitigation measures shall be retained and thereafter maintained as fit for purpose.
 - 16) No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage have been submitted to and approved in writing by the Local Planning Authority. The scheme should also minimise potential impacts to any bats using the trees, hedgerows and buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding. The lighting approved shall be installed and shall be maintained in accordance with the approved details.
 - 17) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter, these works shall be maintained in good working order.
 - 18) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 19) Immediately following implementation of the approved drainage scheme and prior to occupation of any part of the development, the developer/applicant shall provide the local planning authority with as-built drawings of the implemented scheme together with a completion report prepared by an independent engineer that confirms that the scheme was built in accordance with the approved drawing(s) and is fit for purpose. There shall be no deviation to the approved scheme other than with the written consent of the Local Planning Authority. The scheme shall thereafter be maintained in perpetuity.

Richborough Estates