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## Appeal Decision

Site visit made on 12 December 2017

**by Richard Aston BSc (Hons) DipTP MRTPI**

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

**Decision date: 19<sup>th</sup> January 2018**

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**Appeal Ref: APP/D3830/W/17/3187318**

**Land at Rogers Farm, Fox Hill, Haywards Heath**

- 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 Mr Nathan Craker (c/o Vanderbilt Homes) against the decision of Mid Sussex District Council.
  - The application Ref DM/16/3998, dated 20 September 2016, was refused by notice dated 27 July 2017.
  - The development proposed is redevelopment for up to 37 residential units.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was made in outline form with all matters reserved apart from Access. I have determined the appeal on the basis that the plans are indicative.
3. I have been referred to a number of policies within the emerging Mid Sussex District Submission Version District Plan 2014-2013 ('ELP'). Since the application was determined the ELP has passed the stage of public consultation on its Main Modifications but the Inspector's Final Report has yet to be published and the Council anticipate adoption in early 2018. Given the stage of the examination and in accordance with the National Planning Policy Framework ('the Framework'), I attach substantial weight to the policies.

### Preliminary Matter

4. Opposite the appeal site lies Cleavewaters, a 16th century or earlier Wealden hall house and The Olde Cottage, Grade II listed buildings. Whatever the case may be with regard to the appellant's contention that the Council have been inconsistent in their approach to such matters in determining other similar proposals, the parties agree that the proposal would cause less than substantial harm to the significance of designated heritage assets, in terms of their setting.
5. On the evidence before me, and having visited the site, the appeal site is clearly an integral part of the rural setting of the properties and how they are experienced. I concur with that assessment and this is a matter that I return to below.

## Main Issues

6. The main issues are:

- Whether the proposal would provide a suitable site for housing, having regard to its location and the effect on the character and appearance of the area.
- Planning obligations.

## Reasons

### *Suitable Site*

7. The appeal site is formed by a low level grassed field with mature trees and vegetation along the boundaries. It is located outside the built up area of Haywards Heath. The appeal site sits at a lower level than the road and does not currently have vehicle access. The B2112, Lunces Hill runs along the eastern boundary. The surrounding rural landscape is characterised by woodland and arable fields with well-established hedgerow boundaries. The site immediately to the north known as Gamblemead was under construction at the time of my visit for 151 dwellings granted permission by the Council in September 2017.
8. Policy C1 of the adopted Mid Sussex District Local Plan 2004 ('LP') classifies areas outside built-up boundaries as a Countryside Area of Development Restraint and lists the limited types of development to be permitted, save for some specified exceptions which are not relevant in this case. The proposal would therefore conflict with Policy C1.
9. Policy E5 of the Haywards Heath Neighbourhood Plan<sup>1</sup> ('HHNP') designates land outside the built up area as a local gap between Haywards Heath and the neighbouring town/parishes. This is to maintain the landscape character of the area and the rural setting of the town. Although Policy C2 of the LP has a similar aim the Council's evidence and decision does not object on these grounds or refer to this policy and I have not considered it any further.
10. The appellant disputes whether E5 is relevant because the site is shown as being part of 'sites currently under construction committed/consideration' in the HHNP. The Council contends that this reflects the factual position at the time, namely that an application was under consideration and consequently, had it not been then it would have been included as part of a green corridor under Policy E5. To my mind, this seems logical given the inclusion of such land on the opposite side of the road. In any event, the policy refers to 'land outside the proposed built up area' and the appeal site is clearly shown as being outside the built-up area as defined in the HHNP. To my mind, the policy therefore is relevant to the proposal before me.
11. I have been provided with a Landscape and Visual Impact Assessment<sup>2</sup> by the appellant. In character terms and given the wider scope of such an assessment the effects on tranquillity and the landscape as a resource would be minimal and somewhat localised. However, the introduction of the development onto an undeveloped site would alter its character as a site that provides an important

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<sup>1</sup> Made in December 2016.

<sup>2</sup> Aspect landscape planning Landscape and Visual Appraisal September 2016.

- and valuable contribution to the open and undeveloped landscape setting of the settlement.
12. Closer to the appeal site and in visual terms, the visual receptors include the surrounding Public Right of Way Network and nearby residential properties. The openness and spaciousness of the site combines to give the site a stronger affinity with the open countryside than any existing development in proximity to it or any planned residential development in the wider area<sup>3</sup>. It forms an important part of the rural setting of the settlement on the approach into it and positively contributes to its character and appearance.
  13. I note that the appellant contends it would further increase the urban fringe characteristics currently influencing the site, ensuring that the development will not introduce any new or alien components. However, the residential development referred to as Gamblemead is separated from the appeal site by a substantial landscape buffer. In combination with the open agricultural and wooded countryside around it, the appeal site provides an important visual transition between countryside that is visually distinct from the newly extended settlement.
  14. In shorter views, the appeal site is clearly visible through field access points and existing landscaping, especially during the winter months. I am mindful that at reserved matters stage careful consideration would no doubt be given to the scale, layout and appearance of the development along with details of landscaping. Nonetheless, there are a limited number of ways in which the appeal site could be developed for 37 dwellings. Moreover, such buildings are highly likely to be sited uncharacteristically close together and close to the boundaries of the site.
  15. The combination of the buffer and local topography would mean that any development would be clearly visible on the approach down Lunce's Hill and perceived as a separate and distinct residential development. I am not persuaded that it would be seen within the context of an urban fringe setting as the appellant suggests. On the contrary it would be a harmful encroachment into the countryside and the rural character of the approach into the settlement would be irrevocably changed and harmed through the loss of this open land.
  16. Overall, the proposal would result in an unacceptable suburbanisation of the appeal site that would fundamentally change the character and appearance of the rural setting of the settlement. The effects would also be exacerbated somewhat by the loss of part of the existing mature hedgerow for the access. Proposed mitigation, in the form of additional landscaping would restrict the visibility of the proposal from a number of viewpoints. However, it would take a substantial amount of time to mature and be dependent on a number of factors to be successful. Moreover, I am not persuaded that it would fully mitigate the visual impacts.
  17. For these reasons, the proposal would not be a suitable site for housing in terms of location and would cause significant harm to the character and appearance of the area. It would therefore conflict with Policy C1 of the LP and Policies E5 and E9 of the HHNP. In addition to the requirements set out above, these policies also require new development to be permitted where it would protect, reinforce and not unduly erode the landscape character of the area.

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<sup>3</sup> As shown in Fig. 5 of the appellant's statement of case.

There would also be some conflict with Policies DP10 and DP24 which, seek to protect the countryside in recognition of its intrinsic character and beauty and promote well located and designed development.

### *Planning obligations*

18. A Section 106 legal agreement has been submitted dated 15 December 2017. The agreement would secure 11 affordable housing units. It would also make provision for financial contributions to education, libraries, formal sports facilities, health and community infrastructure. Having regard to the development plan and on the evidence put before me by the parties, I consider that these obligations would meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 ('the Regulations') and the tests for planning obligations set out in the Framework.
19. The Council refer to withdrawing this reason subject to a satisfactory agreement. Although written confirmation has not been received, the Council are party to the completed agreement that is now before me. Consequently, it is reasonable to suggest that their objection is not maintained but in any event the proposal would provide the necessary planning obligations. It would accord with Policy G3 of the LP and Policy DP18 of the ELP which, require that the necessary infrastructure to support development can be provided before planning permission is granted.

### **Other Matters**

20. I acknowledge that the application was recommended for approval by officers but the Council's administration and determination of the application are not matters for me to address as part of this appeal.
21. My attention has been drawn to 3 appeal decisions<sup>4</sup> which the appellant contends are relevant to my consideration of the appeal. In addition, to a number of sites within the area which are currently under consideration or under construction. I have had regard to all of these insofar as some of the general issues they raise may be applicable to this appeal.
22. However one appeal decision is from a different local authority area and they all involved different planning judgements to be made, being of a much larger or smaller scale to the proposal before me. Overall, I do not find that they are determinative to my consideration of the main issues within this appeal and my decision has been made on the basis of the evidence, as put to me solely by the parties. Consequently, they do not alter my findings in relation to the main issues and in any event each case must be determined on its own merits.
23. The Council refer to the Written Ministerial Statement of 12 December 2016 ('WMS') in relation to relevant policies for the supply of housing in a neighbourhood plan. The Council confirm that they currently cannot demonstrate a 3 or 5 year supply of housing land and therefore the WMS does not have any implications for this appeal.

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<sup>4</sup> APP/C3810/V/16/3158261, APP/D3830/A/14/2218078 and APP/D3830/A/12/2189451RD.

*Planning balance and conclusion*

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission must be determined in accordance with the development plans unless material considerations indicate otherwise.
25. The proposal would conflict with Policy C1 of the LP and Policies E5 and E9 of the HHNP. There would also be some conflict with Policies DP10 and DP24 of the ELP. It would accord with other policies of the LP, including those dealing with residential amenity, noise, infrastructure, transport and affordable housing but the absence of harm and mitigation in terms of contributions only weigh neutrally in the planning balance. Nevertheless, the conflict with these policies is such that the proposal should be regarded as being in conflict with the development plan as a whole. It is therefore necessary to consider whether there are material considerations which indicate that permission should be granted, notwithstanding this conflict.
26. The Council do not dispute that they currently cannot demonstrate a 3 or 5 year supply of housing land. In turn, this means that Paragraph 14 of the Framework and its presumption in favour of sustainable development applies. However, the parties also do not dispute that there would be less than substantial harm to the significance of designated heritage assets, in terms of their setting. Consequently, before considering Paragraph 14 this harm should be weighed against the public benefits of the proposal.
27. Thirty seven dwellings including 11 affordable units would make a modest contribution in social terms and in an area with an acknowledged shortfall in housing supply and need for housing. Given the apparent extent of the shortfall<sup>5</sup> this weighs substantially in favour of the proposal. I give little weight to the economic benefits of construction jobs and the additional patronage of village services during construction, given their short term nature. However, there would be benefits from future occupants spending within the local economy and a financial benefit from the New Homes Bonus. Given the scale of development these would be modest but nonetheless, the proposal would fulfil the economic and social dimensions of sustainable development as set out in Paragraph 7 of the Framework.
28. Although I give considerable weight and importance to the desirability of preserving the setting of designated heritage assets, the public benefits outweigh the less than substantial harm to their setting. This is not therefore a case where there are specific policies in the Framework which indicate that development should be restricted. It is therefore necessary to consider the fourth bullet point, first limb of Paragraph 14.
29. The adverse impacts of the proposal are my findings that it would not be a suitable site for housing in terms of location and would cause the less than substantial harm to the setting of designated heritage assets. I have also found that there would be significant harm to the character and appearance of the appeal site and area and there would be conflict with Policy C1 of the LP and E5 and E9 of the HHNP.

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<sup>5</sup> The Council confirm that they are unable to demonstrate a 3 year housing land supply.

30. Policy C1 refers to protecting countryside for its own sake, whereas the more recent Framework refers as part of the core planning principles to recognising the intrinsic character and beauty of the countryside, clearly requiring a judgement as to those qualities. Although it may no longer be considered to be a relevant policy for the supply of housing, it relies on a settlement boundary that can no longer be justified and is out of date.
31. The appellant does not suggest that Policies E5 and E9 of the HHNP are relevant policies for the supply of housing and are therefore out of date or that they are not consistent with the Framework. I give significant weight to the harm that I have identified and the conflict with the policies insofar as the effects in terms of character and appearance are concerned. In Framework terms the proposal would fail to fulfil the environmental dimension of sustainable development. I am also mindful that Paragraph 198 of the Framework states 'where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted'.
32. Drawing my conclusions together, the adverse impacts of granting permission are such that they would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would not therefore be the sustainable development for which the Framework indicates a presumption in favour.
33. For the reasons given above, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with it.
34. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*Richard Aston*

INSPECTOR