



Appeal Decision

Site visit made on 8 February 2018

by **Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

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

Decision date: 3 May 2018

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

Land off Hook Lane, Westergate

- 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 the residential development of up to 14 dwellings and associated works (including access, landscaping and open space).
 - This decision supersedes that issued on 24 March 2017. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and outline planning permission is granted for the residential development of up to 14 dwellings and associated works (including access, landscaping and open space) at land off Hook Lane, Westergate, in accordance with the terms of the application, Ref AL/8/16/OUT, dated 25 January 2016, and the plans submitted with it, subject to the conditions on the attached schedule.

Preliminary matters

2. The application was made in outline with all matters reserved. I have dealt with the appeal on this basis. The Council is progressing its new Local Plan, and examination hearings have taken place. However, the Plan has not yet been adopted, and it may be subject to change. This limits the weight I can accord its policies.
3. A section 106 agreement was completed after the decision notice was issued. While it was initially common ground that this resolves the issues identified in reasons for refusal 2, 3 and 4 in the decision notice, the Council has since made representations about the fire and rescue contribution. I will return to this below.

Main Issue

4. The main issue is therefore the effect of the proposed development on the character of the area.

Reasons

5. The appeal site lies on Hook Lane, a long lane winding between the settlement of Woodgate and the more remote hamlet of Aldingbourne. Woodgate appears
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to have grown around the main street and contains houses clustered around closes and cul-de-sacs springing from the through roads. As Hook Lane leads away from the built-up area, the number of side roads lessens and the more urban character of the area dissipates. A looser arrangement of houses, fronting directly to Hook Lane, whose number gradually reduces as the space between them increases, presents a semi-rural character in the mid-section. It leads to a more rural, scattered and isolated character of development in the setting of the open fields towards the end of Hook Lane, at Aldingbourne.

6. In spatial terms, the semi-rural, mid-section of Hook Lane, where the site is located, is defined along its edge opposite the site and above the site by detached houses arranged along the length of the road and fronting towards it. The pattern of development is distinctive for its generally long back gardens and a lack of regularity and uniformity; the front garden depths vary as much as the footprints of the houses, their heights, their alignment and the gaps between them. The side of Hook Lane beside the appeal site has a spacious character lent it by the ground of the horticultural nursery to its south, and the field of the appeal site with glimpses through the hedgerow to the trees and fields beyond.
7. Notwithstanding this, I saw underway the construction of an access road immediately opposite the appeal site, to serve a development of 79 houses behind those already fronting the east side of the same section of Hook Lane. This changes the semi-rural character of this section of Hook Lane by introducing a more urban pattern of development, akin to that within the built-up area.
8. More decisively, the Council has granted outline planning permission¹ on the appeal site for a development of 8 houses. Its illustrative layout indicates a similar number and arrangement of houses fronting Hook Lane as in this proposal. Where the cul-de-sac in this proposal would serve 9 houses to the rear, that in the permitted scheme would serve 3.
9. While this smaller scheme would retain more open space and its housing would be more sparsely arranged than the appeal proposal, it would nonetheless tighten the grain of development in this section of Hook Lane and introduce a cul-de-sac form of development. Given that the appellant has made two applications to develop the site and that the permission opposite is being built-out, I give substantial weight to the likelihood of the permission on the site being implemented.
10. The smaller, permitted scheme, combined with the development opposite the site for 79 houses already underway, indicates that the character of this section of Hook Lane is changing. This has a bearing on the compatibility of the appeal proposal with the pattern of surrounding development.
11. While the arrangement of housing fronting a cul-de-sac would reflect that of the scheme opposite for 79 houses, the density of development would be substantially less, and closer to that existing in Hook Lane. Furthermore, the development would be visually contained by the mature trees and planting along the boundary to the west. The space indicated around the existing pond, and the inclusion of a green space in the centre of the site would diminish the

¹ Planning permission ref: AL/83/16/OUT of 15 March 2018

effect of the shorter back gardens of the houses, and their greater plot coverage, compared to the existing houses on the same side of Hook Lane. I also take into account the buildings already standing towards the back of the site, some of which are single-storey, but not insubstantial in size.

12. Given the enclosure of the site, the location of the existing structures within it, and in the context of the changing pattern of development in this section of Hook Lane, the low density and semi-rural character of this part of Hook Lane would not be unduly diminished. The appeal proposal is in outline form and there is no reason why the design should not be of a high quality that reflects local character and respects and enhances local distinctiveness. The appeal proposal would therefore not conflict with saved policy GEN7 in the Arun District Local Plan 2003 or policies H1 and H3 of the Aldingbourne Neighbourhood Development Plan 2014-2034 (NP).

Other matters

13. NP policy EH1 resists development outside the built-up area boundary unless it is for essential infrastructure, where the benefits outweigh any harm, and it can be demonstrated that no reasonable alternative sites are available. The appeal proposal would not accord with its provisions. However, the Council cannot demonstrate a 5-year supply of deliverable housing sites. In such circumstances, paragraph 49 of the National Planning Policy Framework (the Framework) indicates that relevant policies for the supply of housing should not be considered up-to-date.
14. I appreciate that paragraph 198 of the Framework says that planning permission should not normally be granted where a planning application conflicts with a neighbourhood plan. In this respect, I have had regard to the Written Ministerial Statement² on neighbourhood planning and the circumstances when policies in a neighbourhood plan should not be considered out-of-date where there is a shortfall in housing land supply. However, as the Council can only demonstrate a supply of just over 2 years, its provisions do not apply.
15. The Parish Council points out that although the emerging Local Plan envisages about 30 dwellings for the parish of Aldingbourne, planning permission has been granted for some 349 dwellings in the area. I acknowledge that the Parish therefore contributes significantly to meeting the housing supply needs of the District. Nonetheless, the severe shortfall in housing supply is a district-wide issue; the conflict with policy EH1 therefore has limited weight.
16. The section 106 agreement provides for 2 dwellings as affordable housing, as well as financial contributions towards public open space near the site; local primary, secondary and sixth-form education; a library facility within a community space; and, the provision of smoke detectors in the homes of vulnerable people in Aldingbourne.
17. From the information provided, I am satisfied that the affordable housing provisions and the education, library and public open space contributions are necessary, directly related to the development, and fairly and reasonably related in scale and kind as required by Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). The public open

² Neighbourhood Planning: Written Statement – HCWS346, 12 December 2016

space contribution would be used to provide play equipment at Oliver's Meadow at Aldingbourne. The information from the Council indicates that there are not 5 contributions towards this specific project and therefore there would be no conflict with Regulation 123 of the CIL Regulations.

18. The Council has referred to two decisions by the Secretary of State which reached different conclusions on the justification for the Fire and Rescue Service contribution. In the present appeal, I have insufficient evidence to satisfy me that the provision of smoke detectors to vulnerable people in the Aldingbourne area would be directly related to this particular appeal development, or necessary to make it acceptable in planning terms. In such circumstances, I shall not take this contribution into account in my decision.
19. I appreciate that new occupiers would be likely to use cars to access facilities and services in the wider area. However, there is a shop, a post-office, and a primary school within walking distance of the site. The houses would not be isolated homes in the countryside, and their occupants would help to maintain the vitality of the communities in Aldingbourne Parish, in accordance with paragraph 55 of the Framework.
20. The development would result in additional car trips, however there is no substantive evidence that Hook Lane and the surrounding roads could not cope with the additional traffic of this and other ongoing developments without affecting safety or causing congestion. The illustrated layout suggests parking away from Hook Lane in garages or in the front gardens of the houses, avoiding the need for occupiers to park on Hook Lane. I note that West Sussex County Council, as highway authority, raises no objections to the scheme.
21. The appellant's outline drainage strategy indicates a scheme for the development that does not increase surface water volumes and run-off rates leaving the site. A condition to secure a sustainable drainage scheme would secure this. I note that the Council's drainage engineers have not objected to the proposed development.
22. The western tree and hedge boundary of the site is designated as a biodiversity corridor in the NP. The illustrative layout shows that new buildings would be well distanced from this feature and that the adjoining pond in the south-west corner of the site would be retained. I am satisfied that the biodiversity corridor would not be harmed and that there would be no conflict with NP policy EH2. The application was accompanied by an ecological appraisal, which assessed the presence of protected species and included an appropriate mitigation strategy. This can be secured through a planning condition.

Planning balance

23. For the reasons given above, the appeal proposal would be contrary to policy EH1 in the NP. However, the conflict with this policy has limited weight in view of the Council's housing land supply position. As the Council's policies for the supply of housing are out-of-date, paragraph 14 of the Framework, which establishes the presumption in favour of sustainable development, is engaged in this case. This means that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

24. I have concluded that the proposal would not be harmful to the character and appearance of the area, in the circumstances of this case. There would be some loss of best and most versatile agricultural land. However, the rear parts of the site contain buildings, remnants of buildings, mounds of rubble and a pond. There would also be a lack of contiguity with adjoining agricultural land. In any event, planning permission has been granted for residential development of the site. There is no reason to believe that this scheme would not be implemented in the absence of the current alternative. The likelihood of agricultural use resuming is therefore negligible. Policy EH3 in the NP seeks to resist the loss of agricultural land unless, amongst other things, the need outweighs the harm. The housing need is substantial in this case and, in such circumstances, I do not consider that there would be a conflict with policy EH3.
25. The proposed development would provide 14 dwellings, including affordable housing, at a time when there is a severe shortfall in housing land supply; benefits to which I attach substantial weight. I note that the Council is seeking to address the shortfall in the emerging Local Plan. However, it has not yet been adopted, and it may be some time before the shortfall is resolved. The conflict with policy EH1 in the NP would, in this case, be outweighed by the benefits that would ensue. The adverse impacts would not therefore significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies of the Framework as a whole.

Conditions

26. The Council has suggested a number of conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of the Planning Practice Guidance (PPG); for clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording. I have attached the statutory time condition and the requirements for the reserved matters. For certainty, I have imposed a condition listing the approved drawings.
27. Given the width of Hook Lane, and the proximity of houses, a condition for a construction method statement is necessary. The site is in an area of archaeological significance, where a programme of investigative work is justified. There are mature trees that may be harmed by development without a protective condition, and there is a risk of contaminated ground which needs resolution. Given their place in the construction programme, these conditions need to be resolved before development commences. Any remediation needs to be verified, to protect future occupiers.
28. Visibility splays are necessary to ensure the safety of those at the junction of the new access with Hook Lane. The development needs to be sustainably drained to reduce its burden on the environment, and a water supply to a fire hydrant is necessary to secure the safety of future occupiers. There is no need for these conditions to be resolved any earlier than prior to occupation.
29. A condition to ensure that the development is completed in accordance with the Road Safety Audit is necessary to maintain highway safety. However, as access is a reserved matter, there is no necessity for a condition requiring its provision, at this stage. Precautionary conditions concerning the discovery of contamination and tree roots are also necessary to protect the health of future occupiers and trees. Conditions to protect biodiversity and to restrict external lighting are necessary to protect the ecology of the area and the living

conditions of surrounding occupiers. A condition regarding information on the as-built drainage scheme is necessary for the statutory undertaker to be able to manage drainage.

Conclusion

30. For the above reasons and taking into account all other matters raised, the appeal is allowed.

Patrick Whelan

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 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 Designer's Response.
- 5) 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/0130-16 Tree Protection Plan Phase 1 and B/0130/16 Tree Protection Plan Phase 2.
- 6) 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; and,

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.

- 7) 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".
 - 8) No development shall take place until a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
 - 9) No development shall take place until the following components of a scheme to deal with the risks associated with contamination of the site has been submitted to and approved, in writing, by the local planning authority:
 - a) 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
 - b) a site investigation scheme, based on a), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 - c) the site investigation results and the detailed risk assessment 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.
 - d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- The scheme shall include a timetable and be implemented as approved.
- 10) Prior to the occupation of any dwelling, 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 a 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.

- 11) Prior to the occupation of any dwelling, visibility splays of 2.4 metres by 47 metres to the north and 2.4 by 49 metres to the south shall be 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 the adjoining carriageway level.
- 12) Prior to the occupation of any dwelling, details of a fire hydrant, its connection to a water supply which is appropriate in terms of both pressure and volume for the purposes of firefighting together with its maintenance, or a suitable, alternative arrangement, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, and the hydrant, or the alternative arrangement, shall be retained thereafter.
- 13) Prior to the occupation of any dwelling, the works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details which shall include its maintenance, that have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, and shall be retained thereafter.
- 14) Prior to the occupation of any dwelling, the 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:
 - a) 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;
 - b) include a timetable for its implementation; and
 - c) 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.
- 15) 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.

- 16) If any root structures with a diameter over 25mm are exposed during the excavation of the foundations for the new dwellings then these shall 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.
- 17) The development shall 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 24 hours prior to any works taking place. Any enhancement and mitigation measures shall be retained and thereafter maintained as fit for purpose.
- 18) 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 shall 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.
- 19) Immediately following implementation of the approved drainage scheme, 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 drawings and is fit for purpose, shall be provided to the local planning authority.

END OF SCHEDULE OF CONDITIONS