



Appeal Decisions

Hearing held on 5 & 6 June 2018

Site visit made on 5 & 6 June 2018

by Louise Phillips MA (Cantab) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2018

Appeal A Ref: APP/U1430/W/17/3177298

Land east of Darvel Down and north of Netherfield Road, Netherfield, Battle TN33 9QB

- 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 Park Lane Homes (South East) Limited against the decision of Rother District Council.
 - The application Ref RR/2016/2722/P, dated 18 October 2016, was refused by notice dated 9 February 2017.
 - The development proposed is residential development including parking, access and open space.
-

Appeal B Ref: APP/U1430/W/17/3188117

Land east of Darvel Down and north of Netherfield Road, Netherfield, Battle TN33 9QB

- 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 Park Lane Homes (South East) Limited against the decision of Rother District Council.
 - The application Ref RR/2017/1146/P, dated 14 May 2017, was refused by notice dated 21 August 2017.
 - The development proposed is residential development including parking, access and open space.
-

Decisions

1. Both Appeal A and Appeal B are dismissed.

Preliminary Matters

2. Both applications were made in outline with all matters reserved except for access. The proposed access arrangements are the same for both schemes, as shown on Drawing No 2016/3287/001 Rev B.
3. The schemes are accompanied by illustrative masterplans, with that submitted with Appeal B (J0006924_003_REV4) seeking to respond to some of the Council's concerns in respect of the Appeal A version (4376/1/G). Both masterplans include 48 dwellings, but they represent different responses to the characteristics of the site and its relationship to the surrounding development. Therefore, notwithstanding their illustrative purpose, my decision is informed by both the quantum of development sought through the masterplans; and by

the separate attempts made to demonstrate that this could be satisfactorily accommodated.

4. Some of the documentation submitted in support of the Appeal A scheme has been updated for the Appeal B scheme, and some additional evidence has been prepared. However, given the outline nature of the proposals, the issues raised by the appeals are very similar and so I have dealt with them in one decision.

Main Issues

5. The main issues are:
 - i. Whether the proposed development would be well-related to the existing village in respect of form and function;
 - ii. The effect of the proposed development upon the character and natural beauty of the High Weald Area of Outstanding Natural Beauty (AONB); and
 - iii. Whether the proposed development would be justified in this location, having regard to Main Issues i & ii; to policies concerning housing development in the countryside; and to other considerations including, in particular, the current shortfall in the Council's housing land supply.

Reasons

Main Issue 1: Relationship to the Existing Village

6. Netherfield Village is comprised of older houses and a couple of other uses strung out in a linear fashion along Netherfield Road, and the relatively large Darvel Down estate which was built in the 1950s to accommodate workers of a nearby gypsum factory. Darvel Down is essentially a cul-de-sac development with multiple spurs, which has one junction in and out on the north side of Netherfield Road. The estate includes a primary school, a shop and café, and an outdoor play area. There is a recreation ground and village hall to the east of Darvel Down along Netherfield Road, which mark the end of the main village area.
7. The development boundary for Netherfield is defined by Policy DS3 of the Rother District Local Plan, 2006 (Local Plan). It is drawn tightly around the Darvel Down estate and its purpose is to differentiate between areas where development would be acceptable in principle and where it would not. The appeal site lies outside but adjacent to the development boundary. It is an open field between and abutting Darvel Down to the west and the recreation ground to the east. The southern boundary is with the properties along Netherfield Road, except for where the vehicular access is proposed to be created; and the northern boundary is with dense woodland, which extends into the north-west corner of the site. The site therefore adjoins important existing components of the village on three sides and is well-contained to the fourth.
8. However, the boundary with Darvel Down is marked by a mature hedgerow/tree belt which the parties agree should be maintained for the contribution it makes to the character of the area and to biodiversity. The hedgerow is, at present, both visually and physically impenetrable and, on both

- sides, it looks and feels like a significant barrier between the estate and the open land beyond. This effect would be difficult to overcome through a landscaping scheme given its position on the boundary of the site.
9. The site has no road frontage apart from the actual point of access and, within the constraints of the highway, it would not be possible to provide a pavement from the site to Darvel Down along the northern edge of Netherfield Road. Whilst some sections of pavement could potentially be constructed along the southern edge, these could not be continuous and so no direct pedestrian route from the proposed development to Darvel Down could be achieved along the road.
 10. The parties agree that it would be essential for a separate pedestrian access to be provided between the existing and new development, and, in light of the narrowness of the carriageway and the absence of verges, this would be necessary for highway safety. Therefore, the masterplans for both Appeal A and Appeal B include a "pupil only" footpath from the site into the school grounds; and a combined pedestrian footway and cycle path running from Darvel Down, into the appeal site by the woodland, and terminating at the eastern boundary of the site with the recreation ground.
 11. In both schemes, the pupil only footpath is shown as a short, straight link between the internal access road serving the proposed new houses and the school playground. It would be a most convenient route for children to get to and from school and thus it would represent a strong functional connection between the existing and proposed development for this specific purpose. However, this footpath would not permit access through the school grounds to the other facilities on Darvel Down and it would be closed outside of school drop-off and pick-up times. Therefore new residents wishing to cross into Darvel Down more generally would need to use the combined foot/cycle path.
 12. The masterplans demonstrate that there would be flexibility over the route and form of the combined path within the site itself, but the western-most section from Darvel Down, through the school field and into the site would be fixed according to land ownership and land use constraints. Skirting along the edge of the school playing field, the path would feel removed from the limited services provided in Netherfield which are all to the south, close to the junction with Netherfield Road. The point of entry to the appeal site itself would also be detached from the housing and access roads shown on the masterplans and, given the location of the woodland and drainage pond within the site, this could not easily be rectified through a different layout.
 13. Whilst the path could be constructed to the highway authority's adoptable standards, users would experience noticeable changes in gradient along its length. It would also be enclosed between the existing fencing and planting along the boundary of the adjacent properties on Darvel Down; and the new, open mesh fencing proposed to separate it from the school. Access between the school grounds and the appeal site would be through a cutting in the mature boundary hedge/tree belt already described. Overall, notwithstanding that the path would be lit and that there would be some natural surveillance when the school was open, this key section would not provide a particularly direct or attractive route between the site and Darvel Down. As a result, residents of the new development would be more likely to try to walk along the road into Darvel Down, or to use their cars to go elsewhere.

14. I return to the potential benefits of the combined foot/cycle path for recreational purposes later. However, for the reasons above, despite the close proximity of the site to both the existing estate and the older ribbon development along Netherfield Road, the proposed development would remain self-contained and separate from them. Thus I conclude that it would not be well-related to the existing village in respect of either form or function. It would therefore conflict with Policy OSS2 of the Rother Local Plan Core Strategy, September 2014 (Core Strategy), which requires that where existing development boundaries around settlements are reviewed, regard will be had to the existing pattern, form and function of settlements.

Main Issue 2: The Effect on the AONB

15. The appeal site lies within the High Weald Area of Outstanding Natural Beauty (AONB). The AONB Management Plan 2014-2019 defines the natural beauty, character and special qualities of the AONB with reference to its dispersed historic settlement pattern; ancient routeways in the form of ridgetop roads and radiating droveways; an abundance of ancient woodland; wooded heaths and shaws; and small, irregularly shaped fields often bounded by, and forming a mosaic with, hedgerows and woodland. The East Sussex County Landscape Assessment 2016 also notes the intricate fabric of small irregular fields, abundant woods, hedges and ridgetop villages which characterise the AONB as a whole; while its specific assessment of the Darwell Valley character area within which the appeal site lies, highlights the significance of bold, heavily wooded ridges and a settlement pattern of small villages, hamlets and historic manor houses.
16. Netherfield Road is a ridgetop road with the land to the north and south falling away from it. Historic maps of the area indicate that most of the development along the road was built between 1858 – 1874, and that with the exception of Darvel Down, the form of the village remains largely the same today. The slopes to the north and south of the ridge are a patchwork of small, open fields and dense woodland precisely as described in the AONB Management Plan and County Landscape Assessment and so, in these fundamental respects, Netherfield is a typical village in the AONB.
17. The deep cul-de-sac arrangement of Darvel Down represents a clear departure from the historic linear form of development in the village. The density and uniformity of the dwellings and the presence of pavements, street lights and the like also affords it an essentially suburban character and appearance which contrasts markedly with that of the surrounding area. However, because the older development along Netherfield Road is well spaced to both the east and west and because the road itself resembles a typical rural lane, the rural character of the main routeway is largely preserved. Moreover, the mature hedgerow on the western boundary of the appeal site and the dense woodland to the north of Darvel Down provide substantial physical and visual containment of the estate relative to the wider landscape. Therefore, while Darvel Down is clearly a significant component of Netherfield Village, it does not define its character.
18. The proposed development on the appeal site would, in both schemes, have a similar suburban form to the Darvel Down estate albeit on a smaller scale. Notwithstanding the lie of the land, the roofs of the new houses would be likely to be seen between the roadside buildings and the perception of depth would

detract from the linear pattern of development along the ridge. The proposed landscaped buffer along the southern edge of the site would diminish the visual effect over time, but the trees would take many years to mature. In any case the development would remain visible through the access onto Netherfield Road which, on account of its width and the need to cut back adjacent hedges, would itself represent a suburbanising feature on the lane.

19. In respect of longer views, the parties agree that the main significant visual effects would be from the north-east. From the nearest public viewpoint at Mountfield Court, the existing development on the ridge at Netherfield can be clearly seen with the open pasture comprising the southernmost part of the appeal site behind it. In fact the view with the naked eye is much clearer than is suggested by either the appellant's photograph shown on drawing No 1165/10, or the Council's photograph in Appendix M of its Statement. The pastureland extends some distance from the ridge and it is one of just a few open areas breaking up the heavily wooded landscape in this view. Thus its contribution to the mosaic described in the AONB Management Plan is most significant.
20. Notwithstanding that the proposed new housing on the appeal site would sit below the buildings on the ridge and that it would, in time, be interspersed by trees and other landscaping, the depth of the development would detract from the linear form along the ridge. This would be even more apparent from Mountfield Court than it would be in Netherfield Road itself. The very presence of development, whether or not screened by trees, would also clearly negate the contribution of the site to the mosaic created by open fields, hedges and woodland. Whilst certain parts of the AONB might be characterised by wooded ridgetop settlements, this is not the case in this particular locality where the only residential development visible in addition to that along the ridge is a few relatively isolated large dwellings. Darvel Down is completely hidden as a result of its topography and relationship with the adjacent woodland.
21. For these reasons, I conclude that the proposed development in both Scheme A and Scheme B would be significantly harmful to the character and natural beauty of the AONB. This is notwithstanding that the affected views would be both few and relatively localised. The appeal schemes would therefore conflict with Policy EN1 of the Core Strategy, which seeks to protect the distinctive landscape character and settlement pattern of the AONB; and with Policy OSS2 which requires regard to be had to the conservation of designated landscapes when reviewing development boundaries. It would also conflict with Policies OSS3 and OSS4 of the Core Strategy, which require development to respect the distinctive character of particular areas; and with Policies RA1 and RA2, which respectively require development in rural villages to respond to their locally distinctive character and landscape, and development in the countryside to conserve its locally distinctive character and landscape features. In respect of the specific harm to the AONB, I give this great weight in my decision as required by paragraph 115 of the National Planning Policy Framework (the Framework).

Main Issue 3: Whether the Proposed Development would be justified by Other Relevant Considerations

22. The appeal site is located outside the development boundary of Netherfield in the countryside where housing is not normally permitted by the development

plan. I have also found that the proposed development would not be well-related to the existing village and that it would cause significant harm to the character and natural beauty of the AONB. It would conflict with various policies in the development plan for both of these reasons.

23. However, the Council cannot demonstrate a five year supply of specific deliverable sites for housing as expected by paragraph 47 of the Framework and so the Council's policies for the supply of housing are out of date by virtue of paragraph 49. In this context, the appeals should be determined by reference to the fourth bullet point of paragraph 14 of the Framework, which explains that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the first limb); or specific policies in the Framework indicate that development should be restricted (the second limb).
24. AONB policy is an example of a specific policy in the Framework (in footnote 9) which could indicate that development should be restricted. Paragraph 115 of the Framework directs that great weight should be given to conserving landscape and scenic beauty in the AONB and, in this case, I have already found that the proposed development would cause significant harm to the character and natural beauty of the AONB. Consequently, in these particular appeals, paragraph 115 does constitute a specific policy in the Framework which indicates that development should be restricted. They therefore fall to be determined by reference to the second limb of the fourth bullet point of paragraph 14 rather than the first.
25. Of course this does not mean either that planning permission should automatically be refused, or that the presumption in favour of sustainable development in paragraph 14 should inevitably be shut out. The appeals remain subject to the planning balance required by S38(6) of the Planning and Compulsory Purchase Act 2004: that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. I turn to such material considerations below.
26. The Council's housing land supply amounts to a little over 3 years and so the shortfall against the 5 years expected by the Framework is substantial. Similarly, affordable housing delivery is presently significantly below the annual requirement. Therefore, having regard to the Framework's aim to "boost significantly the supply of housing", the provision of 48 dwellings on the appeal site, of which 40% would be affordable, would be a considerable benefit of either scheme.
27. Moreover, Policy RA1 of the Core Strategy specifically provides for at least 1,670 dwellings to be delivered in the rural villages during the period 2011-2028, including approximately 48 on new sites in Netherfield (Figure 12). As the existing development boundary for Netherfield is drawn tightly around Darvel Down, the Council concedes that new housing sites are likely to be found outside it in the AONB. The preparation of the Battle Neighbourhood Plan, which is expected to allocate sites for housing here has stalled and, to date, the Council has issued a resolution to grant planning permission for just 25 dwellings on land which would be accessed from Darvel Down, subject to the completion of a satisfactory planning obligation. Therefore, while there has been some progress towards meeting the housing contribution estimated from

Netherfield, it is not at all certain that sufficient land will be found for the remainder in the near future.

28. In principle, these circumstances weigh against the conflict I have found with the development plan policies concerning the development boundary and the protection of the AONB. In practice, however, they neither alter the harm which would be caused, nor indicate that the appeal site is the one around which the development boundary of the settlement should ultimately be redrawn. Against the great weight which I must give to the significant harm to the AONB, they do not prevail. In reaching this conclusion, I accept that it might be difficult to find alternative sites for the full 48 dwellings expected in Netherfield, but Policy RA1 does not commit the Neighbourhood Plan to accommodating at least, or even exactly, this figure. Rather it is clear that the village-specific figures in Figure 12 are subject to refinement as a result of further investigation.
29. In addition to the provision of market and affordable housing, there would be other benefits associated with the appeal schemes. These include woodland management and the creation of wildlife habitats; the provision of publicly accessible open space; and economic benefits arising from the construction of the new development and the financial support that more residents would give to local services. The route provided by the combined foot/cycle path considered under Main Issue 1 would also provide an off-road option for existing residents of Darvel Down to access the recreation ground and village hall at the eastern end of the village. Notwithstanding my findings about the value of this path as a functional link between Darvel Down and the appeal site, this would be of benefit, particularly to those residents without a car. The route might also be attractive for recreational purposes for those wishing to walk in the countryside.
30. Taken together with the significant benefit of the additional housing, these other benefits do much to commend the appeal schemes. Overall however, the benefits of the development do not outweigh the great weight that I give to the conservation of the AONB. I therefore conclude that the proposed development would not be justified in this location.

Other Matters

31. An executed unilateral undertaking (UU) pursuant to S106 of the Town and Country Planning Act was provided at the hearing. The benefits which this would secure in terms of affordable housing and the off-road path have been considered above. However, because I intend to dismiss the appeal, I do not need to reach a finding as to whether the individual obligations contained within the UU meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
32. Similarly, while interested parties have raised concerns including the proximity of abandoned gypsum mines; ecology; archaeology; the presence of natural springs; the discharge of septic tanks onto the site; and the capacity of the relevant wastewater treatment works, my decision does not turn on these matters.

Conclusion

33. On account of its poor relationship to the form and function of the existing settlement, the proposed development would conflict with the development plan in respect of its location outside the development boundary of Netherfield. It would further conflict with the development plan because of the harm it would cause to the character of the area, particularly to that of the AONB.
34. In light of the shortfall in the Council's housing land supply, development plan policies for the supply of housing are out of date and so the fourth bullet point of paragraph 14 of the Framework is engaged. However, paragraph 115 of the Framework indicates that development should be restricted and I have found that the material considerations weighing in favour of the development, including the provision of housing, do not overturn this indication. Consequently, my decision must be taken in accordance with the development plan and so I conclude that both Appeal A and Appeal B should be dismissed.

Louise Phillips

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

J Clay	Cornerstone Barristers
M Pickup	Town & Country Planning Solutions
A Jeffery	Landscape Visual Ltd
L Hulkes	Park Lane Group

FOR THE LOCAL PLANNING AUTHORITY:

J Edwards	Rother District Council
V Pullan	East Sussex County Council
C Tester	High Weald AONB Partnership

INTERESTED PERSONS:

R Cooper	Representing 51 local residents in opposition
M Stepanek	Representing some local residents in favour
B Marks	Sussex Area Ramblers
J Matthews	Local resident

DOCUMENTS

1. Planning Obligation by Unilateral Undertaking, certified copy.
2. Appellant's response to Inspector's questions on planning obligation.
3. Planning Obligations – Paragraph 204 NPPF and CIL Compliance Statement.
4. Extracts from East Sussex County Landscape Assessment.
5. 1858 Tithe Map – Land at Netherfield.
6. Zone of Theoretical Visibility Map showing viewpoints.
7. Photographs and map concerning longer distance views.
8. Map showing distance from site to Beachy Head.
9. Appellant's note on paragraph 14 of the NPPF and the tilted balance in AONB applications; and the Council's response.
10. Judgement: Suffolk Coastal DC v Hopkins Homes Ltd; & Richborough Estates v Cheshire East BC, [2017] UKSC 37.
11. Judgement: Barwood Strategic Land II LLP v East Staffordshire BC & SoS CLG, [2017] EWCA Civ 893.
12. Appellant's response to other matters raised by Inspector.
13. 1:200 scale map showing width of proposed foot/cycle path.