



Appeal Decision

Site visit made on 28 January 2019

by Mrs J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 25th February 2019

Appeal Ref: APP/L3815/W/18/3208546
Chaswood, Main Road, Bosham PO18 8PW

- 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 AG Developments against the decision of Chichester District Council.
 - The application Ref CH/17/03626/OUT, dated 13 December 2017, was refused by notice dated 10 July 2018.
 - The development proposed is the construction of 10 dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application is made in outline with all matters save for access reserved for later consideration. The site plan includes an illustrative block plan and correspondence refers to an amended mix in the size of the units. The appellants confirm that the layout is indicative and in the interests of clarity, I am considering only the position of the access on plan 1120 B with the internal layout of the site for illustrative purposes only.
3. Since the site visit the Government has published its Housing Delivery Test results alongside the publication of an updated revised National Planning Policy Framework (The Framework). This makes minor revisions including an additional footnote to Paragraph 11 (effective from 20 February 2019). The Housing Delivery Test outcome for the Council indicates that the delivery has been above the requirement over the last three years (at 126%) which means no change to the housing position. References to the Framework throughout this decision relate to the 2019 Framework.

Main Issue

4. The main issue is whether the site is a suitable location for new housing having regard to the development plan and national planning policies.

Reasons

5. The development plan for the area comprises the Chichester Local Plan – Key Policies 2014-2029 (2015) (Local Plan), and the Chidham and Hambrook Parish Neighbourhood Plan (made 2016) (CHNP). The appeal site lies outside the

Settlement Area Map¹ defined in the CHNP; it is treated, for the purposes of the relevant planning policies, as countryside.

6. Policy LP1 of the CHNP supports development in specific circumstances. One such circumstance is for developments of 10 or fewer dwellings on windfall sites provided that their suitability is assessed in accordance with development plan policies. The CHNP also defines windfall sites as those not specifically identified as available and normally comprising previously developed land (PDL). The CHNP does not allocate any specific new housing sites because recent permissions have exceeded the housing requirement for the plan period and there is no current need to identify new sites for development within its area.
7. The appellants suggest that the starting point for this appeal is an application at Greenacres in Chidham² which is a short distance from this site. That site was initially recommended for refusal however they say was approved following legal opinion³. That may be so, however there appears to be a clear distinction between that site and this appeal as part of the land at Chidham was accepted as previously developed.
8. The appellants' contention that this appeal site is the same as at Chidham is undermined by the fact that, as a former horticultural nursery this appeal site is specifically excluded from the definition of PDL as defined in Annex 2 to the Framework.
9. A further legal opinion⁴ advising the appellants relating to this appeal site opines on the interpretation of Policy LP1 in the CHNP; emphasising that as the word "normally" has been used it would not exclude greenfield sites from being windfall sites nor would it require them to be previously developed land. In short, it argues that any site can be a windfall site even if not PDL and states that if the development complies with relevant policies then in principle should be acceptable. Unsurprisingly the Council take a different view arguing that if this approach were to be applied then any greenfield site with adequate screening could provide further housing. In my view the impact of that approach could lead to a level of housing far in excess of that required by the Development Plan which would fundamentally undermine the strategic approach to the siting of housing in sustainable locations as envisaged by the Framework.
10. The starting point for any planning decision is the development plan. When taken with the definitions set out in the revised Framework it is very clear that agricultural land and buildings are excluded from PDL and agriculture as defined in section 336 (1) of the Town and Country Planning Act 1990 includes horticulture. The Framework reference to windfall sites refers to great weight being given to sites within identified settlements and there is nothing in the Framework which requires that considerations relating to PDL should outweigh development plan policies.
11. The proposed housing would therefore conflict with the strategic approach set out in the Local Plan under Policies 2 and 45.

¹ Map 2 of the CHNP

² 16/04132/OUT

³ Legal Opinion from Landmark Chambers 16 June 2017 (provided as an appendix to the Statement of Case)

⁴ Legal Opinion from Landmark Chambers 24 May 2018 (provided as an appendix to the Statement of Case)

12. Taking all these factors together the development of this site lying outside of the settlement boundary, would represent development within the countryside which would conflict with the Development Plan as a whole. It would not meet the necessary essential, small-scale, local need sought by Policies 2 and 45 of the Local Plan and would conflict with the development plan in that regard. The additional 10 houses which it would deliver are not critical to meeting the objectives of delivering housing particularly in the Neighbourhood Plan area where permissions for development far exceed the required number of dwellings. In this regard there is no demonstrable basis for a decision other than in accordance with the development plan and the proposal should fail.

Other Matters

13. It has been set out that materials would reflect local vernacular however this would be a reserved matter and I do not need to consider this matter further now.
14. I have noted that the access point was considered acceptable by the highway authority and this weighs in favour of the scheme.
15. No drainage issues or any matters in relation to trees or landscaping were raised as problematic. Even so, as these matters are reserved they are not for consideration now.
16. References have been made to an appeal decision⁵ which indicated that in 2017 there was a shortfall in the 5-year supply for the provision of housing. Further reference by the appellants to a more recent appeal⁶ which subsequently concluded a 5-year supply could be demonstrated. The Council confirm that it can demonstrate a 5-year supply and in the absence of evidence to the contrary I have no basis on which to disagree. Therefore, the provisions of paragraph 11(d) are not engaged and the appeal should be determined in accordance with Development Plan policies.
17. Reference has been made to a site at Belfield Nursery which the appellants advance in support of their proposal however that site was previously developed land to which different policies applied and is not therefore comparable.
18. The site is in close proximity to the Chichester and Langston Harbours Special Protection Area (SPA). The proximity of this European site means that determination of the application should be undertaken with regard to the requirements of the Habitat Regulations 2010. The appellants have completed a Section 106 legal agreement which would make financial contributions to a Recreation Disturbance Mitigation Strategy. This would mitigate any harm to the SPA and ensure compliance with Policy 50 of the Local Plan. The appellants have, in that same agreement, made provision for affordable housing contributions in order to comply with Policy 34 of the Local Plan. Both contributions would be a benefit of the scheme. However, as the appeal is failing because of the harm which has been identified in relation to the main issue the development is not going ahead, and I do not need to give any further consideration to these matters.

⁵ APP/L3815/W/16/3165228

⁶ APP/L3815/W/17/3182355

19. The boundary of the Chichester Harbour Area of Outstanding Natural Beauty (AONB) runs along the southern side of the A259. The appeal site lies to the North of the A259 and there are intervening land uses such that the site would not have a harmful impact on the AONB. Neither is there any suggestion that the site is subject to any other landscape designation and these factors are neutral in the planning balance.
20. It is argued that the proposed development would not cause harm to the area's character and appearance as any visual impact would be limited. The protection of the countryside is a central consideration, but it does not mean that land outside settlement boundaries is insulated from any change. The Framework advocates that the countryside's intrinsic character and natural beauty should be recognised, but this does not necessarily mean protecting sites where those qualities are lacking. In the overall planning balance therefore, the visual effect on the character and appearance of the site as a result of the development is neutral.

Planning Balance

21. Planning applications are required, by law, to be determined in accordance with the development plan, unless material considerations indicate otherwise. Local and Neighbourhood Policies together set out the Council's spatial strategy guiding development proposals to the most sustainable locations. Outside of the defined settlements development is restricted unless it meets an identified need or involves the development of PDL and meets the requirements of the Local Plan.
22. I have had regard to the various other matters that have been referred to, but for the reasons given I conclude that the most relevant locational policies in this appeal are those that I have identified, namely Policies 2 and 45 of the Local Plan, and Policy LP1 of the CHNP. The appeal proposal would be contrary to the Development Plan strategy for the distribution of new housing, and for the protection of the countryside. The provision of 10 houses would inevitably contribute to the stock of housing in the district and there would also be a benefit to the local economy arising from construction. Nonetheless, no overriding need or exceptional circumstance has been demonstrated which would warrant a decision other than in accordance with the development plan.

Conclusion

23. For the reasons set out above and having regard to all other matters raised the appeal should be dismissed.

Janet Wilson

INSPECTOR