



Appeal Decision

Site visit made on 24 May 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 11th July 2019

Appeal Ref: APP/D3830/W/19/3220898

Land at Gibbshaven Farm, Felbridge Road, Felbridge

- 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 Acorn Property Group against the decision of Mid Sussex District Council.
- The application Ref DM/18/0157, dated 11 January 2018, was refused by notice dated 9 August 2018.
- The development proposed is outline application for residential development of up to 30 dwellings, public open space and ancillary works, with all matters reserved.

Decision

1. The appeal is dismissed.

Procedural Matter

2. This is an outline application with all matters reserved. I have treated the plans as indicative as far as they relate to reserved matters.

Main Issues

3. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether there is a local need for the housing to justify development of the land as a Rural Exception Site;
 - whether the proposed affordable housing and adequate provision for infrastructure have been satisfactorily secured through an appropriate Planning Obligation (PO).

Reasons

Character and appearance

4. The appeal site consists of 2 agricultural fields in the countryside, as defined by the Mid Sussex District Plan 2014-2031 (2018) (LP), to the west of Felbridge village and outside of any settlement boundary. The site is contiguous with the farmed countryside which surrounds it to the north and west. The settlements of Furnace Wood and Crawley Down lie to the west and south-west of the proposed development separated by open countryside.
5. A field fronting Felbridge Road would accommodate up to 30 dwellings, with a field to its rear used for public open space and play area. Hedgerows and

mature trees form external site boundaries and run between the two fields. Public rights of way run to the west and east of the site, abutting it in places, and meeting at an apex to the north of the site.

6. There is a relatively recent housing development broadly opposite the appeal site on the south side of Felbridge Road, separated into two parts by a green, as well as more established dwellings in a small cluster fronting Felbridge road to the east of the site. These examples of nearby residential development also lie outside of the settlement boundary.
7. The parties have drawn my attention to a relevant appeal decision¹ ('the earlier appeal') involving the same appellant and a similar proposal for up to 30 dwellings, public open space and ancillary works on the site. Since the principal change in the scheme before me is the level of affordable housing proposed, the proposal remains materially the same as considered in the earlier appeal as far as character and appearance matters are concerned. Given this, I give the Inspector's findings on this main issue substantial weight.
8. The Inspector in the earlier appeal, having taken into account the appellant's Landscape and Visual Appraisal² resubmitted in the appeal before me, found that harm to landscape character would be limited and localised. However, he had stronger concerns in relation to the effect of the proposed development on the settlement pattern of the area.
9. The Inspector found that the development in depth of the proposal and its position in the centre of a continuous area of open pastureland between Felbridge and Furnace Wood would have a harmful effect on the openness of the 'Strategic Gap'. He considered that the development would coalesce with the dwellings to its south to form a single larger group, contributing to the identified harm. The overall effect would be to fail to retain the separate identity of settlements, and would be contrary to the Framework's aim to ensure that developments establish a strong sense of place (now Paragraph 127 of the revised Framework).
10. I have seen no substantive evidence to lead me to form a different conclusion than the Inspector's findings in the earlier appeal. I concur with those findings. Notwithstanding an element of set back from the road and a landscaped frontage, the proposed development in coalescence with adjacent residential developments would create an urbanising effect to this stretch of countryside which would significantly erode the sense of travelling between the distinct settlements of Felbridge, Furnace Wood and Crawley Down. The Inspector found conflict with the development plan at the time, the Mid Sussex District Plan (2004), in respect to the 'Strategic Gap' and for the same reasons I find that the harm would be in conflict with Policies DP12, DP13 and DP32(iv) of the LP which together seek to ensure that the character and appearance of the countryside is protected through the prevention of coalescence which would harm the separate identity and amenity of settlements. The proposed development would also be in conflict with Policies CDNP05 and CDNP08 of the Crawley Down Neighbourhood Plan 2014-2031 (2016) (NP) which together seek to ensure that new development prevents coalescence and protects the character and appearance of the area.

¹ APP/D3830/W/16/3156544, Decision date 12 January 2017.

² LDA Design, 11 December 2015.

11. While the NP does not specify particular Local Gaps, as Policy DP13 of the LP refers, its policies only permit development outside the village boundary if it can be demonstrated amongst other things that it would not significantly reduce the gaps between the village and neighbouring settlements or contribute to 'ribbon development' along roads linking them. The proposal would do both.

Local housing need

12. The proposal is for 100% affordable housing in order to develop the land as a Rural Exception Site. The Council has said that no consultation took place with either the Parish Council or the Council's Housing Enabling team and no Housing Needs Survey was undertaken. Accordingly, its position is that the current need for affordable housing in this location is unknown.
13. The appellant has submitted evidence that as at November 2017 there were 39 people in need of affordable housing who expressed a first preference to be housed in the Crawley Down area (email from the Council's Housing Enabling Team, 24 November 2017), and as at February 2019 there were 277 applicants in the neighbouring District Council area of Tandridge on the Housing Register who had confirmed an interest in the Felbridge/Baldwins Hill area.
14. It is further submitted by the appellant that during the Local Plan Examination, a statement of common ground agreed by the Council and considered acceptable by the Inspector agreed that the District was in need of a minimum of 258 affordable dwellings per year. Further, that a similar figure of 260 affordable dwellings per year has been set by the Council for the plan period. The appellant has said that according to housing completions data, the Council delivered 82 affordable homes in 2016-2017 and 79 affordable homes in 2015-2016. The Council did not comment on these submissions in its Statement of Case. The gap between need and supply demonstrated by these figures, in combination with the evidence submitted as to particular local demand, appears to show a need for the appeal proposal.
15. Therefore, for above reasons and taking all into account, I find that there is a local need for the proposed housing as a Rural Exception Site which is justified by the best available evidence. As such it is not in conflict with Policy 32(ii) of the LP which seeks to ensure this is the case.

Planning obligation

16. In order for affordable housing to be provided effectively, arrangements must be made to transfer it to an affordable housing provider, to ensure that appropriate occupancy criteria are defined and enforced, and to ensure that it remains affordable to first and subsequent occupiers. The legal certainty provided by a planning obligation makes it the best means of ensuring that these arrangements are effective.
17. The appellant is willing to make financial contributions towards infrastructure requirements for local leisure, community, library and educational facilities as well as sustainable transport development. I am satisfied that these would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. There would also be no conflict with the limit of five or more obligations towards an infrastructure project. I am therefore satisfied that

the development contributions would be in accordance with Policies DP20, DP24 of the LP and Policy CDNP01 of the NP if adequately secured through a planning obligation.

18. However, both the affordable housing and the infrastructure requirements are sought to be secured by the appellant through a Unilateral Undertaking (UU) which the Council disputes meets the requirements of its development plan and supplementary planning guidance.
19. The appellant argues that the Planning Obligation should not require the provision of 'free serviced land' (land at nil land value and nil public subsidy) since the proposal involves 100% affordable housing as a Rural Exception Site. I do not share that view. Policy DP31 setting out the requirements for acceptable affordable housing schemes requires free-serviced land to be provided. Although DP32 relating to Rural Exception Sites does not explicitly repeat that requirement, it is clear that such sites are affordable housing schemes and therefore the requirements of DP31 apply. This is supported by the Council's Affordable Housing Supplementary Planning Guidance which says "*A principal requirement of the District Council is to ensure that the necessary serviced land is made available at nil cost for the subsequent construction of the requisite number of affordable housing units to meet needs identified as a priority for the district. This will be secured in a planning obligation.*"
20. The UU submitted does not provide for free-serviced land and is in conflict with this requirement. Taking all into account, an appropriate Planning Obligation necessary to secure required affordable housing and infrastructure requirements has not been provided. As such the proposed development is in conflict with Policies DP20, DP24 and 32 of the LP and Policy CDNP01 of the NP which together seek to provide affordable housing necessary for Rural Exception Sites and to secure directly related infrastructure requirements which are fair and reasonable in scale and kind to the development.

Planning Balance and Conclusion

21. The proposed development would not accord with the development plan as a whole. The proposal would meet a local need for affordable housing and would boost housing supply in this regard. There would also be economic benefits through construction and the potential for future occupiers to spend locally and support local services. Additionally, there would be some enhancements to biodiversity at the site were the recommendations of the Ecological Impact Assessment to be followed. However, taking all into account, these considerations would not outweigh the conflict with the development plan as a whole. Accordingly, for the reasons given, the appeal should not succeed.
22. The appeal site is close to the Ashdown Forest Special Area of Conservation (SAC) zone of influence. As the appeal is being dismissed for reasons relating to the main issues, it is not necessary to consider the matter further.

Andrew Walker

INSPECTOR