



Appeal Decision

Site visit made on 12 January 2016

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 10th February 2016

Appeal Ref: APP/D3830/W/15/3131527

Pakyns Garden Cottage, Albourne Road, Hurstpierpoint, Hassocks, West Sussex BN6 9ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs M Alderton against the decision of Mid-Sussex District Council.
 - The application Ref 14/03414/FUL, dated 22 September 2014, was refused by notice dated 1 April 2015.
 - The development proposed is the erection of 12 dwellings comprising 1x5 bed, 7x4 bed, 2x3 bed and 2x2 bed (flats over garages) together with associated access and parking.
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Decision

1. The appeal is dismissed.

Policy Context

2. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The relevant development plan here includes the saved policies of the adopted Mid Sussex Local Plan (2004) (the MSLP) and policies of the made Hurstpierpoint and Sayers Common 'Parish 2031' Neighbourhood Plan (2015) (the HSCNP). In the case of any conflict the more recent plan merits greater weight. Not yet part of the development plan but also material is the emerging draft Mid Sussex District Plan 2014-2031 (the MSDP). However that has yet to be submitted for examination and therefore currently only merits limited weight.
 3. To the east the main body of the site closely adjoins the Langton Lane Conservation Area. A small part of the north east corner of the site is within the conservation area. The submitted evidence refers to a need for off-site works to create visibility splays for the new proposed access. One of those splays would require works within the conservation area.
 4. Other important material considerations include the National Planning Policy Framework (the Framework) and associated Planning Practice Guidance (PPG).
 5. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development and provides that where relevant policies are out of date then permission should be granted for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when
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assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

6. In the latter regard a footnote draws particular attention to policies concerning designated heritage assets, amongst other things. However those policies themselves require a balancing of any identified harm with any public benefits which is similar to the usual test in paragraph 14.

Main Issues

7. Having regard to the local and national policy context and the reasons for refusal the main issues are considered to be:
 - whether relevant development plan policies are out of date
 - what effect the development and any necessary off-site access works would have on the character and appearance of the countryside and the Langton Lane Conservation Area and on the setting and significance of that designated heritage asset;
 - whether safe and suitable access to the development can be achieved for all people;
 - whether there would be adequate provision of necessary infrastructure to support the development; and
 - whether any identified adverse impacts would significantly and demonstrably outweigh any public benefits of the development.

Reasons

Development Plan Policies

8. For the purposes of the development plan the appeal site is located in the countryside, well outside the settlement boundary for Hurstpierpoint as defined by MSLP Policy C1. The proposed development is not one that the policy would permit in the countryside. As that settlement boundary restricts the availability of land for housing development it is a housing supply policy. The District Council accepts that it cannot demonstrate that it currently has a 5 year supply of suitable and deliverable housing land as required by paragraph 47 of the Framework. In these circumstances paragraph 49 of the Framework provides that relevant [development plan] policies for the supply of housing should not be considered up to date. It follows that MSLP Policy C1 should be considered out of date to the extent that it restricts the supply of housing.
9. HSCNP Policy HurstC1 only permits development in the countryside for '*an appropriate countryside use*'. The policy does not define an '*appropriate countryside use*' but if that is interpreted to exclude housing development the policy would be out of date in that regard. The policy also provides that all development in the countryside '*maintains or where possible enhances the quality of the rural and landscape character of the parish area*'. That criterion is not out of date since it need not prevent housing development which accords with that objective. Moreover it is consistent with a core planning principle of the Framework to recognise the intrinsic character and beauty of the countryside.

10. Although not a reason for refusal by the District Council, the Parish Council's objections are based in part on the site's location in the designated Local Gap between Hurstpierpoint, Albourne and Sayers Common for the purposes of both MSLP Policy C3 and HSCNP Policy HurstC3.
11. Policy C3 limits development in the Local Gap to that necessary for agriculture or another use that has to be located in the countryside. Development is also required to make a valuable contribution to landscape and amenity. As that would seem to exclude general housing this qualifies as a housing supply policy and is thus out of date in that respect.
12. However the policy also includes other criteria which are broadly shared with the more recent Policy HurstC3. These seek that development does not individually or cumulatively result in coalescence and the loss of the separate identity of neighbouring settlements. As that need not exclude all housing development then I do not consider that the policies are out of date in that regard. The effect of the development on the Local Gap is considered below.

Character and Appearance

13. LP Policy B1 seeks a high standard of design and sets out relevant criteria including respect for the character of the locality and setting, and effective use of existing landscape features. LP Policy B12 seeks to protect the special character and appearance of conservation areas including when development abuts the conservation area. Policy HurstC4 will permit development in the countryside adjacent to conservation areas where it does not conflict with countryside policies and where the settings of the conservation areas are conserved or enhanced. The Framework at paragraph 131-134 accords great weight to the conservation of designated heritage assets and provides that any identified harm to their significance should be weighed with any benefits.
14. Langton Lane Conservation Area is in the countryside and entirely outside the defined settlement boundary for Hurstpierpoint. I saw that it is characterised by low density residential development including several listed buildings, mostly built in the rural vernacular. These and the other scattered buildings are informally arranged at various angles and distances from the area's roads and paths which are themselves rustic in character. There is also extensive tree cover which means that some buildings are mainly or partially screened from public view. Overall this creates a strongly rural, informal and very low density character for the conservation area.
15. The nearest listed building to the appeal site is Pakyns Manor. This large house stands in extensive grounds that are bounded by trees, walls and banks such that the listed building is almost invisible from the public realm and could not be seen from anywhere on the appeal site. As such I do not consider that its setting would be affected by the proposed development.
16. Pakyns Garden Cottage is a large 20th century house set back from Albourne Road. It is just within the western boundary of the conservation area and is adjacent to the designated Local Gap. The appeal site occupies land within the Local Gap that appears to have been formerly part of a large agricultural field but which has been enclosed by a wire fence as part of an extended curtilage for the cottage. It is apparently in use as an extended garden with hedges, orchard trees, other trees and rough grass. An application for retrospective permission for the change of use of part of the land from agriculture to garden

was apparently withdrawn in 2008, but no reason has been provided for that withdrawal and it is not clear whether the garden use is currently lawful. In any event the land is not previously developed land as defined in the Framework and it would qualify as greenfield land whether its lawful use is as a garden or for agriculture. Parts of the land near the road have apparently been used for open storage of construction waste but there is no evidence before me as to whether that is lawful.

17. From the north west the appeal site is largely screened from Albourne Road by an overgrown deciduous hedge set on a low bank. There are a few deciduous trees along the frontage. The site is more clearly visible from a public footpath that runs north-south beyond the adjacent field to the west. That path runs beside mature screen planting alongside the A23 dual carriageway, which is here in a shallow cutting. At present the view east from that path towards the appeal site is of open land against the backdrop of the conservation area. The upper part of Pakyns Garden Cottage can be seen, set behind a hedge and amongst trees. That view is entirely consistent with the verdant and low density character of the local countryside and the conservation area.
18. The proposed development seeks to emulate a farmstead to include a dwelling resembling a farmhouse and what are intended to appear as converted barns. This is an attempt to create a design in keeping with its setting in the countryside. However, whilst some use would be made of characteristic vernacular materials and architectural features, the overall effect would be unconvincing. In particular the buildings would be larger, taller, more densely grouped, and more closely spaced than is typical either of other buildings in the conservation area or of farmsteads in the wider local countryside. Moreover the dwellings would be set out on a very regular grid pattern that is also not characteristic of the conservation area. In most views the buildings would merge into a continuous hard-edged block of built development that would be entirely out of keeping with the character of the conservation area and the countryside.
19. All existing trees and hedges would be removed from the site and there would only be very limited scope for new tree or hedge planting to soften the development. On its western edge adjoining the open field the buildings would abut the site boundary for much of its length. Whilst the site layout suggests hedge planting along this boundary, there would be insufficient room to plant and maintain a hedge alongside the buildings. Moreover the noise evidence recommends that a solid fence would be needed along this boundary to shield the development from the noisy A23 traffic. That would be a very urban feature that would exacerbate the hard edged appearance of the buildings.
20. The development would be clearly seen from the well-used public footpath to the west. It would also be seen both a gate in the hedge that adjoins another public right of way to the south and through the wide new access to Albourne Road. Moreover, as it is likely that much of the hedge and trees and along Albourne Road west of that access would need to be removed to create safe visibility splays, the development is thus likely to be fully exposed to view, at least until any new planting matures behind the visibility splay. It would be likely to take a number of years for the new planting to provide an effective screen and its long term provision and maintenance at a sufficient height and density is not assured.

21. Works would be needed around the access to create the new junction to Albourne Road. Those works and the indicated pedestrian crossing also risk an urbanising effect in this rural lane. Works within the adjacent conservation area are also likely to be needed if safe visibility is to be created to the east. The visual impact of those works is difficult to assess from the submitted drawings but is likely to risk further harm to the rural character of this road and the conservation area, particularly if works to regrade the bank caused damage to the adjacent trees and their roots.
22. In relation to the local gap policy the low density rural character of the conservation area contributes to the separation of the more dense village settlements. This much more dense development would occupy an almost central position between Albourne and the defined settlement of Hurstpierpoint and it would have a dense and more urban character. It would represent a significant encroachment into the gap which would be further exacerbated by any cumulative development of adjoining land. Neither would it be clear whether the development belonged to one or other settlement, thereby blurring their separate identities.
23. Overall it is concluded on this issue that the development would be a poor design contrary to LP Policy B1 and in the terms of the Framework it would result in significant (albeit less than 'substantial') harm to the setting and significance of the Langton Lane Conservation Area. It would also result in significant harm to the landscape character and visual amenity of the countryside and to the separate identities of Hurstpierpoint and Albourne. The proposed development would thereby contravene relevant policies of the development plan including some criteria of LP Policies B1, B12, C1, C3, and of Policies HurstC3 and Hurst C4. It would also contravene Framework objectives to protect the intrinsic character of the countryside and heritage assets. That harm would need to be considered in the planning balance.

Access

24. MSLP Policy T4 and HSCNP HurstH6 provide amongst other things that new development should not cause an unacceptable impact on the local environment in terms of road safety and increased traffic and should provide satisfactory access points. That is consistent with the Framework at paragraph 32 which seeks amongst other things that decisions should take account of whether a safe and suitable access can be achieved for all people. That paragraph was not included in those paragraphs recited in the Appellant's highways appeal statement.
25. The development would be served by a new pedestrian and vehicular junction from Albourne Road. That road is the B2116 and it links the large settlements of Hurstpierpoint and Hassocks to the London Road in Albourne (the former A23) via a bridge over the dual carriageway A23 Sayers Common Bypass. London Road connects with junctions on the current A23 to the north and south. There are alternative routes out of the settlements but Albourne Road itself is moderately busy. I saw that it was popular with recreational cyclists at the time of my site visit on a fine but cold winter's day.
26. The road is subject only to the national 60mph speed limit where it passes the appeal site and there is no evidence before me that any consideration has been given to extending the existing 30mph speed limit to the west.

27. When assessing junction safety the Department of Transport's Manual for Streets (2000) (MfS) recommends stopping sight distances for streets where 85th percentile speeds are up to 60km/h (37.3mph). However the MfS visibility splays based on those distances are not intended for application at speeds above 37mph. Above that speed the MfS advises that stopping sight distances in the Design Manual for Roads and Bridges (DMRB) may be more appropriate. In this case 85th percentile speeds are a little above 37mph at 41-43mph.
28. The Appellant references research published in 2007 which was part of the original evidence base for MfS. That suggested that there is a poor correlation between visibility and accident records. However as it did not prevent the inclusion of recommended safe stopping distances and splays in the subsequent publication of MfS, and because speeds in this instance are above MfS speeds, I accord it little weight.
29. On the advice of the highway authority, the District Council objects that the access would be unsafe because the visibility splays would fall below recommended standards in the national DMRB. The Appellant does not dispute that the DMRB seeks 2.4m x 120m sightlines.
30. The road has a country lane character in the vicinity of the appeal site where it is lined by hedges on low banks. The hedges contain some trees. The red line defining the appeal site only has a short frontage to Albourne Road and improvements to the sightlines would require works on both sides of the access that are outside the red line defining the appeal site and are not within the highway. The Appellant has demonstrated that land to the west of the proposed access is in the same ownership as the appeal site. Much of the land to the east is in separate ownership.
31. The Appellant has submitted drawings which seek to demonstrate that the recommended sightlines are achievable. The DMRB recommends that these splays are measured to the nearside kerb. However in each case the sightline is measured to a distance 1m out from the edge of the carriageway. That departure from the usual kerb edge location is stated to be to reduce the need to cut vegetation. It has not been justified on safety grounds. This is not a wide road and it is likely that vehicles will often travel closer than 1m to the road edge, including when overtaking slower traffic on the opposite side of the road. Moreover even with that modification it would still be necessary to regrade the existing banks and to maintain vegetation within the splays at a reduced height which would require constant maintenance.

Visibility to the East

32. To the east the 'y' distance if measured to the kerbline would be about 110m rather than the claimed 120m which is to a position 1m from the kerb. The submitted drawing does not map the hedgerow trees and it is not clear whether any would need to be removed or if their roots would be affected. The Appellants have submitted a draft option agreement which indicates that the owners of the land to the east may agree to sell to the prospective developers (not the Appellants) a 3m strip of land along their frontage to provide the visibility splays. If that option agreement is signed and dated it would make it more likely that the developers could achieve sufficient control to regrade the land and to maintain the vegetation in the future. Given the evidence of actual speeds then a splay of 2.4m x 110m is likely to be adequately safe and could be secured by a Grampian style planning condition.

33. However it is possible that the local planning authority may determine that planning permission would be required for the engineering works to regrade the bank. If so, the determination of such an application would need to take account of the effect on the conservation area (including any effect on trees) and its success is not assured.

Visibility to the West

34. If measured to the kerbline the 'y' distance to the west would be about 70m rather than 120m. There appears to be scope to extend that. However it would be necessary to remove 2 groups of trees to achieve the necessary visibility. It would probably also be necessary to remove and replace a long section of hedge. These works may be achievable as that land is controlled by the Appellants. But they would be likely to leave the appeal development fully exposed to view over a long stretch of Albourne Road for a number of years until the new planting matures. The visual impact may be extended or reoccur if any new planting along the frontage is not retained and kept at a suitable height. That positive action would be difficult to achieve by condition and to subsequently enforce in the event that hedge plants or trees are cut down or removed. This would add to the adverse impact to character and appearance that has already been identified from other viewpoints.
35. There is a footway on a raised verge on the opposite north side of the road from the appeal site which provides access to the village. The appeal proposal indicates a proposed pedestrian crossing point in the vicinity of the appeal site access to include steps and a path up the bank within the highway verge to join that footway. These works are outside the appeal site and would need to be negotiated separately with the highway authority. It appears that a similar crossing has previously been agreed further to the east but it has yet to be implemented and I have not seen any drawing.
36. It is concluded overall that to secure adequately safe visibility would require works on private land adjacent to the highway and outside the appeal site. There appears to be a reasonable prospect that sufficient control could be exercised over that land to achieve adequately safe visibility in both directions and safe conditions for pedestrians to cross the road to and from the public footway.
37. On the basis that development would not proceed without those works, which could be required by planning conditions, then the development would not contravene the highway safety policies of the development plan or the Framework. However it has not been demonstrated that the works can be achieved without additional harm to the character and appearance of the countryside and the Conservation Area which would add to that harm identified above.

Infrastructure

38. The Appellant's appeal statement does not dispute the need for the various infrastructure contributions requested by the Council. The Council's appeal statement commented that the Appellant is working with the Council to complete a legal agreement to secure the required infrastructure contributions in which case the Council would not contest the relevant reason for refusal. In the event no agreed obligation is before me. However the Appellants have

submitted a completed unilateral undertaking which appears to provide for all the contributions requested by the Council.

39. The Council had no comments to make on the undertaking but neither have they or the Appellant provided evidence as to the justification for seeking each contribution. There is thus insufficient evidence before me to conclude whether or not the requested contributions are necessary and reasonable and otherwise meet the requirements of the development plan, national policy in the Framework, or especially the Community Infrastructure Levy Regulations (2010) (as amended) which, amongst other things, now include a restriction on pooled contributions to the same infrastructure. However, given the other considerations in this appeal it is unnecessary to seek further evidence that would allow a conclusion on these matters.

Benefits

40. The development of the houses would provide significant economic and social benefits including a modest contribution to the shortfall in housing supply in the District, employment during construction, and employment in the manufacture and supply of materials, fixtures and furnishings. These benefits need to be balanced with the identified harm.

Overall Conclusions

41. Having regard to the Framework, which is an important material consideration, it is concluded that those development plan policies that relate in full or in part to matters of housing supply are to be considered out of date in that regard due to the shortfall in housing land supply. The associated conflict with those housing policies should be set aside. However other development policies that are consistent with the Framework remain relevant, as do the policies of the Framework taken as a whole.
42. In accordance with paragraphs 14 and 134 of the Framework consideration has been given to the identified benefits of the development which have been weighed with the identified harm. The principal identified harm would be environmental harm to the character and appearance of the countryside and the separate identity of the settlements and the significant but less than substantial harm to the setting and significance of the Langton Lane Conservation Area. The harm contravenes some criteria of relevant development plan policies.
43. Whilst the development proposal does not itself include the necessary works to achieve safe access it should be possible to secure them by condition. However those works would be likely to add further harm to character and appearance.
44. The unilateral undertaking would provide the infrastructure contributions sought by the Council although further evidence would be needed to establish if they meet all regulatory and policy requirements for such obligations.
45. The overall conclusion is that the identified environmental harm to character and appearance and heritage significance contravenes the development plan and here significantly and demonstrably outweighs the benefits of the development in the terms of paragraphs 14 or 134 of the Framework. For the same reasons, the environmental harm outweighs the social and economic benefits such that this would not be a sustainable development. The

presumption in favour of sustainable development therefore does not apply. Having regard also to all other matters raised by the parties and interested persons, the appeal should be dismissed.

Robert Mellor

INSPECTOR

Richborough Estates