



Appeal Decision

Site Visit made on 18 August 2021

by R J Jackson BA MPhil DMS MRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 04/10/2021

Appeal Ref: APP/L3815/W/20/3266072

Land at Bethwines Farm and South of Ivy Lodge, West of Blackboy Lane, Fishbourne PO18 8BH

- 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 Fishbourne Developments Ltd against the decision of Chichester District Council.
 - The application Ref FB/20/02303/FUL, dated 11 September 2020, was refused by notice dated 23 December 2020.
 - The development proposed is construction of 35 no. affordable residential dwellings for first-time buyers with associated access, parking, landscaping and associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021 a revised version of the National Planning Policy Framework (the Framework) was published by the Government. The main parties were given the opportunity to make representations of this. I have taken into account the submitted comments from the Council. Paragraph numbers below all relate to the 2021 version of the Framework.
3. The appellant indicated it intended to submit a Planning Obligation pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) to deal with various matters. However, none was submitted within the timeframe set.

Main Issues

4. The proposal is being promoted as an "Entry Level Exception" (ELEx) site pursuant to paragraph 72 of the Framework. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) requires this determination to be made in accordance with the development plan unless other material considerations indicate otherwise. I have therefore set out the main issues on the basis of relevant development plan policies and will come to whether the proposal would meet the criteria as an ELEx scheme, and any other benefits of the scheme, when considering whether there are such other material considerations.
5. The main issues are:
 - the effect on the character and appearance of the area;

- the effect on the living conditions of the proposed occupiers, in terms of outdoor amenity space, privacy and noise;
- whether the proposal makes adequate provision for foul and surface water disposal;
- whether the proposal would utilise sustainable construction methods in line with development plan policy;
- the effect on habitats sites;
- whether the proposal makes adequate provision for affordable housing and necessary infrastructure; and
- whether there are any other material considerations, including the nature of the proposals and its benefits, the housing land supply position and the current status of the development plan, that mean the proposal should be determined otherwise than in accordance with the terms of the development plan.

Reasons

Character and appearance

6. The appeal site lies in one corner, effectively at the junction of Blackboy Lane and Bethwines Close of a large, extensive agricultural field, although there is an existing single two storey dwelling (Ivy Lodge) on the corner. The landscape is effectively flat, although it changes some distance to the north as the landform rises to the South Downs and the National Park. At the time of my site visit it was in agricultural production. There were no physical boundaries on the southern or western limits of the site.
7. To the north is Bethwines Close, which is an area of residential development, predominantly made up of bungalows. To the northwest is Bethwines Farm, with a number of agricultural buildings. To the east is residential development fronting Blackboy Lane which is two storeys in height being made up of pairs of semi-detached dwellings or short terraces with gaps between. These are completed in contrasting brick and rendered materials. This development is set a short distance back from the highway behind a wide verge. This set back, along with the gaps between buildings, creates a sense of space. A ditch runs along the western side of Blackboy Lane from just south of Ivy Lodge and there are three oak trees, protected by a Tree Preservation Order, on this boundary.
8. The appeal proposal would result in a roughly rectangular form of development on this corner when including Ivy Lodge, which does not form part of the appeal site. Access would be from Bethwines Close and would be in the form of a 'T' shape with an elongated top, and short sections of road facing east and west at either end. The proposal is for two-storey frontage development, mostly made up of pairs of dwellings but linked with pairs of garages. For those properties without garages, principally flats, there would be surface parking. This would be predominantly either side of the entrance road, and at the eastern end of the site.
9. The appeal site includes part of the access to Bethwines Farm, and also provides for a road up to the western boundary of the site in the northwestern corner. A foul water treatment plant, known as a Packaged Treatment Plant

(PTP), would be provided in the southwestern corner and there would be a small pond in the southeastern corner.

10. The development plan for the area includes the Chichester Local Plan: Key Policies 2014-2029 (adopted 2015) (the CLP), the Site Allocation Development Plan Document 2014-2029 (adopted 2019) and the Fishbourne Neighbourhood Plan 2016 (made 2016) (the FNP). Policy 2 of the CLP sets out the development strategy and settlement hierarchy with small scale development and local community facilities being permitted within the settlement boundary of Fishbourne. Under Policy 45 of the CLP development in the countryside will be granted where it requires a countryside location and meets the essential, small scale and local need which cannot be met within or immediately adjacent to existing settlements.
11. The site lies in the countryside and the proposal does not require a countryside location. In proposing 35 dwellings, in my view, this does not constitute a small scale development and, in any event, is outside the settlement boundary and is clearly contrary to these two policies. The principle of the development does not comply with the development plan.
12. Policy D 1 of the FNP explains what is considered to be of good design. In respect of this main issue, this explains that development should respond to local character, reflecting the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation, should prevent coalescence between Fishbourne and Bosham by establishing a strong sense of the place of Fishbourne, and by being visually attractive.
13. Policy 33 of the CLP indicates that planning permission will be granted for new residential development where all of a number of criteria are met. Again, for this main issue, those relevant include the highest standards of design, and respect and where possible enhance the character of the surrounding area and site in terms of proportion, form, massing, siting, layout, density, public amenity and detailed design. Policy 48 of the CLP requires that development should have no adverse impact on openness of views in and around the setting of the South Downs National Park (the SDNP), respect and enhance landscape character and maintain the individual identity of settlements. Policy 54 of the CLP requires the provision of open space.
14. The residential development of the appeal site will have a significant urbanising effect on this section of countryside. It would fail to recognise the intrinsic character of this area as required in paragraph 174 of the Framework. From a wide arc from the south, it would significantly and demonstrably intrude into this landscape. However, from the northwest on Clay Lane from just south of where it crosses the A27, this would not be significant in that it would effectively infill a small visual gap between the farm buildings and existing development. Due to the size of and the extensive area between Fishbourne and Bosham this would not result in coalescence in any meaningful way and the individual identity of Fishbourne would remain. Due to the distance to and scale of the development I am satisfied that the proposal would preserve the setting of both the SDNP and Chichester Harbour Area of Outstanding Natural Beauty.
15. Turning to the layout, while the proposal keeps to two storeys it would not, overall, integrate well with the existing pattern and layout of development in the area. Rather than gaps between individual groups of dwellings, whether

semi-detached or terraced, creating a sense of space, there would be a continuous form of development, particularly along the longer east/west road. This would be emphasised by the continuous brick materials, which would not reflect the identity of local surroundings and the interest that exists in Blackboy Lane with the contrast between the brick and light coloured render.

16. Looking at the development facing Blackboy Lane, while this would reflect this pattern of development opposite, the extensive area of parking would be incongruous and harmful to the street scene. Further the proximity of the parking and the ditch, which is often wet, along with the linear nature of the open space, while providing sufficient space in quantitative terms, would not provide a high quality and useable open space for the proposed occupiers. The provision of landscaping or fencing along this boundary would be both out of keeping with the existing area and would further reduce the useable area of the open space. The provision of street trees along the internal roads would not be sufficient to mitigate these deficiencies.
17. Overall, therefore, the proposal would be significantly and demonstrably harmful to the character and appearance of the area. It would not provide a high quality of design reflecting the identity of the surroundings and would not provide a usable, high quality development. As such it would be contrary to Policies 2, 33, 45, 48 and 54 of the CLP and Policy D 1 of the FNP. It would also be contrary to paragraph 130 of the Framework which indicates that developments should be visually attractive and sympathetic to local character. Further paragraph 134 of the Framework states that development that is not well designed should be refused.

Living conditions

18. I have not been directed to any development plan policies that make any reference to living conditions for occupiers. However, I have been directed to the Council's 'Design Guidelines for Alterations to Dwellings & Extensions'. While I have been not given any information about this document's status, or whether it was subject to public consultation, and it clearly refers to alterations and extensions to dwellings rather than new building, it does provide information on privacy and amenity. Paragraph 130 of the Framework requires planning decisions to ensure a high standard of amenity for future users. Therefore, I am able to give this design guide moderate weight, but will give greater weight to the subjective criterion set out in the Framework. The design guide indicates that for extensions there should be at least 10 m from rear to side elevations for two storey development. The officer report also indicates that a distance of 21 m is normally required between first floor habitable rooms in a back-to-back situation, and 12 m in the back-to-side.
19. As pointed out by the Council the central dwellings backing on to the flatted element to north and south have gardens in the order of 5 m to 6 m in depth. While some of the gardens are wider including the area behind the garages this would lead to a cramped form of development with there being a harmful overbearing effect from the property to the rear. Further, rear gardens of the properties on the southern part of the site are approximately 7 m in depth, which would be insufficient to give a high standard of amenity.
20. There would also be harmful levels of overlooking from the rear elevations of the flats to the west of the entrance road towards the properties at the western end of the development and their gardens. This would also apply from the

properties in the western portion into the gardens of the three bedroom property on the northwestern side of the junction of the "T".

21. Concern has been expressed about noise and smells from the PTP in the southwestern corner. While clearly it would have been better had full details of the enclosure been provided and in English, I am satisfied that, as the Council's Environmental Health Officer makes clear, this could be resolved by the imposition of appropriate planning conditions.
22. However, notwithstanding this, the proposal would not give rise to a high standard of amenity for the occupiers of the proposed dwellings in terms of lack of amenity space and privacy and would result in overbearing effects. As such the proposal would be contrary to paragraph 130 the Framework and represent poor design.

Drainage

23. Nominally the appeal site is within the catchment of the Apuldrum Wastewater Treatment Works (WwTW). However, due to the effect on habitats sites discussed below there are issues with draining additional sites to this Works. This has been set out in a 'Position Statement on managing new housing development in the Apuldrum (Chichester) Wastewater Treatment Works Catchment' (the Position Statement) produced by the Environment Agency (the EA) and Southern Water Services. This document cannot be determinative, but I give it substantial weight.
24. The Position Statement states that new development outside of the Settlement Boundary of Fishbourne will be directed to alternative WwTW catchments, notably Tangmere WwTW, via the new sewer pipeline connection once operational. I have not been advised whether this is yet in use, but the Position Statement indicates that the pipeline would be in 2020.
25. It should be noted that for major developments within the Fishbourne settlement boundary applicants will need to demonstrate no net increase in flows to the Apuldrum WwTW. Options for this may include removal of surface water from combined sewers, the retrofitting of water efficiency measures to reduce flows, or offsetting existing flows from previous development.
26. To respond to this issue the appellant is proposing a PTP in the southwestern corner of the appeal site which would mean that the development would not need to rely on a WwTW for foul water drainage.
27. The EA objects to this arrangement in principle. It refers to Reference ID: 34-020-20140306 of the Planning Practice Guidance (the PPG) which states: "When drawing up wastewater treatment proposals for any development, the first presumption is to provide a system of foul drainage discharging into a public sewer to be treated at a public sewage treatment works (those provided and operated by the water and sewerage companies)". I concur that this would be the optimum solution since it minimises risks.
28. This Reference ID of the PPG continues, "where a connection to a public sewage treatment plant is not feasible (in terms of cost and/or practicality) a package sewage treatment plant can be considered", and the appellant makes its case on this basis.

29. The appellant indicates that to connect to the new pipeline a new pumping station, approximately 2.3km of rising main and a crossing of the A27 would be required. This would, so the appellant asserts, make it not practical or, without providing costings, be viable.
30. While the Position Statement makes a differentiation between those sites within and outside the settlement boundary of Fishbourne I consider that requiring a proposal of this scale in proximity to the settlement boundary to connect to the new sewer is a false choice and avoids considering practical solutions which may be available. The alternative of connecting to an existing sewer that connects to the Apuldram WwTW and providing off-setting of the types set out for sites within the settlement boundary would be a practical solution. This has not been explored by the appellant.
31. I therefore conclude that the appellant has not demonstrated that there are no other practical and viable solutions which would allow connection to a public sewer, and therefore the proposal would be contrary to the provisions of the PPG. This I find a substantial failing and I give this substantial weight against the proposal.
32. Notwithstanding this, as pointed out by local residents, the application as submitted has practical issues with its design. This proposal is the second proposal for this site, with the earlier version having the PTP in the southeast corner, and its outfall into the ditch alongside Blackboy Lane. The drainage layout for that earlier scheme was submitted as part of this application and there is no detail as to where the PTP in the current proposal would discharge. As a full application where this is clearly a main issue at least an outline of the arrangements should be shown.
33. The surface water system has been designed utilising voids under hardsurfaced areas with a volume to deal with storm events up to the 1 in 100 year storm (plus 40% increase for climate change). The information in the Drainage Strategy Report indicates that the voids would only just be sufficient for the maximum requirement at 580 m³. This would indicate that outflows from the PTP should not be to this surface water drainage system as this would otherwise lead to the risk that it would have insufficient capacity in the appropriate worst case.
34. In order not to add to the risk of non-foul water flooding off-site the site should drain at greenfield rates. Given the size of the site at just less than 1 ha this would be 2 l/s. In light of my conclusions in the above paragraph, any output from the PTP site would need to drain to the ditch or elsewhere; the ditch would be the most practical solution. However, as the hydrobrake for the surface water system discharge is shown to be set at 2 l/s to ensure function any output from the PTP would be in addition to this. The peak 'clean' foul flow rate is shown in the submitted Drainage Strategy Report at 1.48 l/s. Consequently, the overall (surface and 'clean' foul together) discharge would therefore be above greenfield rates. It has therefore not been shown that the proposals would not add to the risk of non-foul water flooding off-site.
35. It has therefore not been shown that the proposal would be able to be adequately drained. It would therefore be contrary to Policy 12 of the CLP which requires development to contribute to the delivery of identified actions to deliver infiltration reductions. It would therefore also be contrary to paragraph

167 of the Framework which requires development not to increase flood risk off-site.

Sustainable construction

36. Policy 40 of the CLP sets out a series of criteria which need to be considered for all new dwellings. Meeting these criteria can be a matter of negotiation having regard to abnormal costs, economic viability and the feasibility on the particular site. As set out above no case on viability has been made by the appellant. In my view consideration also must mean that, if appropriate, the design should incorporate the relevant provision. The Council has raised concerns about four of the criteria.
37. The appellant submitted a Sustainability Statement with the application. This noted a 1.2% reduction in CO₂ emissions in relation to the Building Regulations but rejected renewable energy proposals for various reasons set out in the Statement.
38. It seems to me that, given the evidence of the Council that considerably greater reductions in CO₂ emissions through construction techniques and renewables have been achieved elsewhere, the 1.2% saving proposed here seems very low, particularly in the context of the Council's Interim Position Statement for Housing development (see below) which requires a 19% improvement. The use of smart meters and relying on occupiers to monitor them to ensure energy reductions seems to be a passive response. Certainly, it has not been demonstrated that there are any abnormal factors that affect enhanced delivery. For example, the use of air source heat pumps has been rejected in aesthetic and noise terms, but no evidence has been submitted to show why this would be unacceptable or design techniques could not be used to mitigate any such effects.
39. However, I am satisfied that other criteria set out in the policy relating to sustainable drainage systems, the shading of pedestrian routes and electric vehicle charging could be delivered by condition.
40. Notwithstanding this, it has not been demonstrated that appropriate sustainable design and construction techniques have been appropriately considered. As such the proposal would be contrary to Policy 40 of the CLP.

Habitats Sites

41. The appeal site lies within 5.6km of the Chichester and Langstone Harbour Water Special Protection Area (SPA). It is also in proximity to a number of other habitat sites set out in the officer report which the proposal may affect. In determining this appeal, I am the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
42. The proposed development would result in an increase in the number of people living in proximity to the habitat sites. It is not in dispute that this proposal, in combination with other plans and projects, is likely to have a significant effect on the habitat sites through increased recreational activity and increased nutrient load. As the proposal is not directly connected with or necessary for the management of the habitat sites it is therefore necessary for me to undertake an appropriate assessment of the implication of the proposal for the habitat sites in view of their conservation objectives. I can only grant planning

permission if I ascertain in that appropriate assessment the integrity of the sites would not be adversely affected.

43. As I am going to dismiss this appeal for other reasons, it is not necessary for me to undertake an appropriate assessment. However, because the result an appropriate assessment may make a difference in my overall consideration of the appropriate planning balance, I need to explain why I could not have concluded that the proposed development would not have an adverse effect on the integrity of the relevant habitat sites.
44. While the effect of recreational disturbance could have been mitigated through provision of financial contributions towards Suitable Alternative Natural Greenspace and Strategic Access Management and Monitoring no Planning Obligation is in place to secure such a contribution.
45. The concern is the increase in nitrogen and phosphorus into the Solent water environment that may be caused by the occupiers of the additional dwellings. The applicant submitted a document entitled 'SBR-N for Nitrogen Neutrality at Blackboy Lane' and a supplementary Technical Note (together 'the SBR-N').
46. Without an agreed water environment solution, I cannot be certain, utilising the relevant level of scientific rigour, that the proposal would not have such an effect. For the reasons set out above, I have not been able to conclude that the foul water solution is acceptable and from that it must be the case that the proposed water environment solution is also not acceptable.
47. Even if I had been to conclude the PTP proposed was acceptable for draining the site, I still would not have been able to find that this would not give rise to an increase in nutrient load. As Natural England noted in its consultation response the SBR-N does not use the latest (June 2020) guidance in calculating Total Nitrogen load. In addition, a PTP has a greater risk of failure when compared with a public sewage treatment works (hence the PPG guidance quoted above), and I do not believe that the use of a planning condition would be appropriate to ensure the proper level of monitoring and maintenance as it would not be reasonable.
48. Taking the above together, I cannot therefore be satisfied that the proposed development would not have an adverse effect on the integrity of the relevant habitat sites. As such it would be contrary to Policy 50 of the CLP which requires appropriate mitigations for the effects of development on habitats sites.

Infrastructure

49. Various policies of the CLP require the provision of affordable housing and necessary infrastructure, as well as the long term maintenance of open space on and off site. The appellant appears not to dispute the need for the matters to be secured by a Planning Obligation, but as set out above none is in front of me.
50. As there is no completed Planning Obligation in front of me, I can only conclude that the proposal does not make adequate provision for a financial contribution towards A27 Local Plan mitigation works in line with the Council's Supplementary Planning Document 'Approach for securing development contributions to mitigate additional traffic impacts on the A27 Chichester

Bypass' or for the provision, management and maintenance of Public Open Space on site.

51. Consequently, the proposal would be contrary to Policies 8, 9 and 54 of the CLP which require contributions towards the A27 Chichester Bypass, other infrastructure provision, and open space. Furthermore, however considered, affordable housing is not secured, whether as Entry Level Exception scheme (ELEX) or as non-ELEX affordable housing.

Other material considerations

Introduction

52. As set out towards the top of this decision, the proposal is as an ELEX. However, the Council disputes whether it would meet the relevant policy. Further the Council accepts that it cannot demonstrate a five-year supply of land for housing and thus it is necessary to determine whether the presumption in favour of sustainable development set out in paragraph 11 d) of the Framework applies.
53. An ELEX site is for a type of affordable housing. There is a dispute between the parties as to how this should be considered particularly in the light of development plan policies. There is, of course, no Planning Obligation in front of me which would be required to ensure that the dwellings are maintained under this regime in perpetuity.

Entry Level Exception

54. Paragraph 72 of the Framework indicates the local planning authorities should support the development of ELEX scheme, suitable for first-time buyers (or those looking to rent their first home), unless the need for such homes is already being met in the authority's area. It makes clear that such sites should be on land not already allocated for housing and should comprise entry-level affordable housing as defined in the Framework, be adjacent to existing settlements, proportionate in size to them, not compromise the protection given to areas or assets of particular importance in the Framework and comply with any local design policies and standards.
55. Footnotes 35 and 36 of the Framework make clear that ELEX sites should be no larger than 1 ha in size or exceed 5% of the size of the existing settlement, with the areas or assets of particular importance in the Framework being those set out in footnote 7 of the Framework.
56. This site is less than 1 ha and the 35 dwellings is less than 5% of the size of Fishbourne. With the exception of the effect on habitat sites, the proposal would not adversely affect any of the areas or assets set out in footnote 7.
57. There are no policies in the CLP which refer to ELEX sites. This is not surprising as this national policy post-dates the adoption of the CLP in 2015. The Council considers that it should comply with the relevant policy for Rural Exception Sites (Policy 35 of the CLP), but in my view a proposal for a Rural Exception Site and ELEX schemes are completely separate.
58. Firstly, they are dealt with in different paragraphs of the Framework, with rural exceptions dealt with in paragraph 78. A Rural Exception site is defined in the Glossary to the Framework as a "small site" and for the "local community". Had

they been the same thing there would be an expectation that they would have been cross-referenced in the Framework. Further, there is no definition in the Framework of what is a "small site". However, the Framework does define "Major development"¹ as being for 10 or more dwellings or on a site of 0.5 ha or more. It seems to me that for these purposes a proposal cannot be both a "major development" and a "small site".

59. Secondly, the ELEX is to meet needs within the authority's area. This is different from local need which is normally identified by a parish needs survey. That a parish needs survey has not been done is therefore not material in determining whether a proposal meets the criteria as an ELEX scheme, nor is whether there is a need within this Fishbourne parish, and it should relate to need for the whole of the local planning authority area.
60. The CLP was adopted more than 5 years ago and is being updated. As part of this process the Council has commissioned 'The Chichester Housing and Economic Development Needs Assessment' (the HEDNA). The latest version dates from 2020 and, while it has not been tested, is the most up-to-date analysis available and is based on housing need based on national methodologies. I therefore give it significant weight. The HEDNA has identified a need for 348 social/affordable rented dwellings per annum between 2019 and 2036 and 130 dwellings per annum for affordable home ownership for the same period. The Council therefore considers that affordable housing should predominantly be for rental rather than purchase. However, provided that the identified need for affordable home ownership is not met across the whole of the authority's area then I can see no reason why a proposal for first time buyers alone could not meet the criteria for a ELEX scheme.
61. The Council's Statement of Case indicates that there will be some 381 affordable home ownership units to be delivered between 2021 and 2025, with an additional 117 at Tangmere, 27 at Highgrove Farm and 26 at Westhampnett, along with additional units at major and windfall sites to be provided. These four figures total 551, which represents approximately 110 dwellings per annum. It seems to me that, as with five year land supply, it is for the Council to show that a need is met. Relying on windfalls and other, non-identified, major sites is not sufficient. It therefore would appear that the need for affordable home ownership has not been met in the authority's area and consequently the proposal would meet this criterion as an ELEX scheme.
62. Local residents have expressed concern about the proportion of three-bedroom properties making the assertion that these would not be suitable for first time buyers/renters. However, it seems to me that because an occupier may be a slightly larger household does not mean that it would not meet that the relevant criteria for occupation. In addition, the Council has not indicated that this size of property is not needed in the authority's area.
63. In light of all the above, I conclude that the proposal would not represent an ELEX scheme, but this is only because the dwellings have not been secured as such, it has not been shown that the proposal would not have an adverse effect on habitats sites and would not comply with local design policies rather than any other matter.

¹ With the exception of the specific provisions relating to development in National Parks, Areas of Outstanding Natural Beauty and the Broads which are not applicable to this case.

Housing Land Supply and whether the 'tilted balance' applies.

64. The Council has confirmed that the CLP is more than five years post-adoption and is not based on the standard method for assessing local housing need. It has also confirmed it is unable to demonstrate a five year supply of housing land. In light of this the Council accepts its housing policies are out-of-date.
65. While the local plan is reviewed the Council has adopted an 'Interim Position Statement for Housing development' (the IPS). While I have concluded that the proposal would not meet the criteria as an ELEx scheme, for completeness I have considered whether the proposal meets the criteria in the IPS. The intention behind the IPS is that the Council would be able to guide development to appropriate and sustainable locations.
66. The IPS requires development to be of good quality and also sets out thirteen criteria to meet. For the reasons already set out, the proposal would not be good quality through the design deficiencies and would also not meet the criteria relating to flooding and nitrate neutrality.
67. Paragraph 11 d) of the Framework indicates that where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
68. Footnote 7 sets out the relevant areas and assets and these include irreplaceable habitats which will include the habitats sites referred to above. Furthermore, paragraph 182 of the Framework indicates the presumption in favour of sustainable development does not apply where the project is likely to have a significant effect on a habitats site unless an appropriate assessment has concluded that the plan will not adversely affect the integrity of the habitats site.
69. For the reasons set out above that would not be the case and, consequently, the provisions of paragraph 11 d), the so called 'tilted balance', will not apply. This does not mean, however, that the lack of a five year supply of housing land is not, of itself, a material consideration which would apply in favour of the proposal.

Benefits

70. Construction of the proposal would deliver benefits in economic and social terms. However, as there is no Planning Obligation to secure affordable housing this can only be given moderate weight, as it would not be development plan compliant in this regard.

Other Matters

71. Local residents have expressed their concerns about the effect of the proposal on highway safety and wider public safety given the proximity of the railway level crossing on Blackboy Lane. However, I note that the highway authority has raised no objection subject to conditions in respect of the non-strategic

road network. Network Rail initially raised a holding objection in relation to the level crossing but subsequently withdrew this in relation to the specific scheme.

72. In light of this response, I am satisfied that the proposed development locally would not have an unacceptable effect on highway or public safety nor would the residual cumulative effects on the road network be severe.
73. Local residents are also concerned that the layout makes provision for access through the appeal site to land to the northwest. This may be the case, but any future proposals for any further land outside the appeal site would have to be considered in the light of circumstances pertaining at that time. However, it does seem to me that this arrangement would mean that there would not be a well landscaped boundary in this location and this can only add to my conclusion that the proposal is not well designed.

Planning Balance

74. The site is located in the countryside and does not represent a development of a type permitted in such a location in the development plan. The proposal has not been well designed so that it would be out of keeping with the character and appearance of the area and would lead to poor living conditions for some of the occupiers. It would not deliver sustainable design and construction techniques. It would not be satisfactorily drained, it has not been shown that the proposed development would not have an adverse effect on the integrity of habitats sites and does not provide for affordable housing however considered.
75. The matters relating to infrastructure set out above are necessary to meet development plan policies and the needs of the development. Therefore, the failure to secure these matters adds to the harms. Furthermore, the lack of a Planning Obligation means the proposal is not secured as an ELEX scheme. All of these matters lead me to conclude that the proposal would not comply with the terms of the development plan when taken as a whole.
76. Notwithstanding the lack of a five year supply of land for housing, and the support from the Framework for ELEX schemes, these do not represent material considerations either individually or cumulatively to outweigh the presumption in favour of determining the application in accordance with the development plan. In any event Regulation 63(5) of the Habitats Regulations means that I would be prevented from granting planning permission in respect of the effect on habitats sites.
77. For the avoidance of doubt, even if I had concluded that the tilted balance was to apply on the basis that the drainage solution had been delivered which would have allowed me to conclude that the proposal would not have an adverse effect on the integrity of the habitats site, the harms I have identified, particularly through the poor design and lack of secured affordable housing and necessary infrastructure, would have been sufficient individually to conclude that the proposal would not have been acceptable as this would have led to significant and demonstrable harm which would have outweighed the benefits of the scheme when assessed against the policies of the Framework taken as a whole.

Conclusion

78. For the reasons given above I conclude that the appeal would be contrary to the development plan taken as a whole. As there are insufficient material

considerations to indicate a decision contrary to the development plan, the appeal should be dismissed.

RJ Jackson

INSPECTOR

Richborough Estates