



Appeal Decision

Site visit made on 21 June 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2022

Appeal Ref: APP/Z3825/W/21/3283648

Woodfords, Shipley Road, Southwater RH13 9BQ

- 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 Reside Developments Ltd against the decision of Horsham District Council.
 - The application Ref DC/20/2564, dated 18 December 2020, was refused by notice dated 29 April 2021.
 - The development proposed was originally described as 'outline planning application (all matters reserved except access) for demolition of existing dwelling and associated buildings and the erection of approximately 78 new dwellings (C3 use) and associated public open space, landscaping, drainage and highways infrastructure works, including vehicular access from Shipley Road.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved except for access which is to be considered at this stage. I have determined the appeal on this basis, and while I have had regard to the submitted plans, I have treated aspects pertaining to the layout, scale, appearance and landscaping of the development as indicative.
3. The description of development in the banner heading above is taken from the application form. However, amended plans were submitted prior to the Council's decision on the planning application setting out revisions to the scheme including a reduction in the number of dwellings proposed from 78 to 73 and showing the retention of an existing farmhouse on the site. It is clear from the Council's report and decision notice that the proposal was dealt with according to these amended plans. I have determined the appeal on the same basis, and with regard to the revised description of development stated on the decision notice and entered by the appellant on the appeal form which is consistent with the amended scheme. This describes the proposal as 'outline application for the erection of up to 73 new dwellings (C3 use) and retention of existing farmhouse building, associated public open space, landscaping, drainage and highways infrastructure works, including vehicular access from Shipley Road with all matters reserved except access'.
4. When the application was made, ownership Certificate B was signed indicating that requisite notice had been given to everyone who, on the day 21 days before the date of the application, was the owner and/or agricultural tenant of any part of the land or building to which the application related. At appeal

stage, the appellant advised that notice had not though been served on West Sussex County Council Highways as owners of part of the land, and that Certificate C should have been signed since part of the land is unregistered.

5. However, the purpose of the ownership certificates is to ensure that all those who may have a legal interest in the land are alerted to a proposed development. From the evidence before me, West Sussex County Council Highways were aware of the proposal. Notice of the application was also published in a local newspaper as required under the Certificate C process. In addition, Certificate C has been signed at appeal stage and notices have been served on all known owners of the land and a notice published in the local newspaper. In these circumstances, I am satisfied that no prejudice has been caused by the failure to serve notice on West Sussex County Council Highways and completion of the incorrect ownership certificate at application stage.
6. The Council's second reason for refusal referred to the absence of an agreement to secure provision of affordable housing as part of the development. In its appeal evidence, the Council indicated that references to footway improvements on Worthing Road and Shipley Road, and to provision of 4 custom/self-build units had been omitted from the reason in error. The appellant did not raise any objection to these additions, and has submitted a signed Unilateral Undertaking dated 29 April 2022 ('the UU') under section 106 of the Town and Country Planning Act 1990 which includes obligations sought by the Council, as well as a copy of a Confirmatory Unilateral Undertaking by Santander UK PLC (as Mortgagee) dated 23 May 2022. Nevertheless, the Council indicates that it would not endorse the appellant's UU, and I return to consider this matter further below.
7. Subsequent to the Council's decision on the application, it received advice from Natural England raising concerns in relation to the impact of water abstraction within the Sussex North Water Supply Zone ('SNWSZ') on the integrity of the Arun Valley Special Area of Conservation ('SAC'), Special Protection Area ('SPA') and Ramsar Site. In light of this advice, the Council considers that a new reason for refusal should be added regarding the effect of the development on the Arun Valley sites in the absence of demonstrated water neutrality. The main parties have had the opportunity to comment on this matter as part of their evidence, and have also been able to comment in relation to the appellants proposed approach to achieve water neutrality. I have determined the appeal on the submissions and evidence before me.
8. Also since the Council determined the application, the Shipley Neighbourhood Plan 2021 ('SNP') has been formally made and therefore now comprises part of the development plan, and the Government published a revised version of the National Planning Policy Framework ('the Framework'). The main parties have been able to comment on the relevance of the Framework and the SNP as part of their evidence, and I have had regard to both in making my decision.

Main Issues

9. In light of the above and the evidence before me, I consider that the main issues are:
 - i) whether or not the proposed development would provide a suitable location for housing having regard to its position within the countryside and the spatial strategy for the District; and

- ii) the effect of the proposal on the integrity of the Arun Valley SPA, SAC and Ramsar Site, with particular regard to the abstraction of water within the SNWSZ.

Reasons

Suitability of the Location

10. The appeal site is located on Shipley Road on the outskirts of Southwater. It includes a dwelling known as Woodfords, stables and a riding arena together with a number of outbuildings which are set within mostly open fields. Belts of trees and relatively dense vegetation surround the majority of the site boundaries, and there is a further tree belt and a very large Oak within the site close to Woodfords.
11. Policy 2 of the Horsham District Planning Framework 2015 ('HDPF') provides a spatial strategy intended to maintain the district's unique rural character whilst ensuring that the needs of the community are met through sustainable growth and suitable access to services and local employment. It focuses development in and around Horsham with growth in the rest of the district directed in accordance with the identified settlement hierarchy.
12. Policy 3 of the HDPF sets out that development will be permitted in towns and villages which have defined built-up areas. Outside of built-up area boundaries, Policy 4 outlines that the expansion of settlements will be supported subject to criteria including that the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement edge. Policy 26 of the HDPF further relates to development in the countryside, and includes a requirement that any proposal for development outside of built-up area boundaries must be essential to its countryside location.
13. The site is adjacent to but outside of the defined built-up area boundary of Southwater, and is therefore within the countryside in planning policy terms. It is not allocated for development in the Local Plan or a neighbourhood plan and I have not been provided with substantive evidence demonstrating that the development is essential to its countryside location. In these circumstances, the location of the development within the countryside would be contrary to the spatial strategy, and would conflict with Policies 2, 3, 4 and 26 of the HDPF.
14. However, the site adjoins the edge of Southwater, and future occupiers would have access to a range of local services and facilities and employment in Southwater, as well as nearby public transport links. The Council has not identified that the development on this site would otherwise cause unacceptable harm in respect of matters including landscape, highways, neighbouring living conditions, air quality, trees, flood risk, or heritage assets. From the evidence before me, and subject to appropriately worded planning conditions, I can see no firm reason to take a different view.
15. Moreover, the Council has advised at appeal stage that it can no longer demonstrate a five year supply of deliverable housing sites, referring to a supply position of around 4 years. In accordance with footnote 8 of the Framework, the policies that are most important for determining the application are therefore deemed out of date, and the presumption in favour of sustainable development outlined at paragraph 11(d) of the Framework is engaged. This provides that planning permission should be granted unless (i) the application

of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or (ii) 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.

16. I return to consider whether the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development below. In any event though, a rigid application of Policies 2, 3, 4 and 26 insofar as they seek in principle to generally restrict housing development outside of built-up area boundaries would frustrate attempts to address the housing supply deficit. As a result, I agree with the Council that the weight to be afforded to the conflict with these policies should be significantly reduced.
17. Conversely, the proposal would make effective use of the appeal site to deliver 73 dwellings. This would make a relatively small but nevertheless important contribution to reducing the deficit in housing supply. I agree with the Council that the benefit of the additional housing here is a matter that would attract very significant weight. The main parties have referred to additional benefits including the delivery of affordable housing, custom/self build plots and economic and social benefits associated with the construction and occupation of the development which I consider further in my planning balance below. Even without these benefits though, I consider that the benefit of the delivery of 73 dwellings would in this case outweigh the conflict with Policies 2, 3, 4 and 26 of the HDPF on account of the location of the development outside of a defined settlement boundary.
18. In this context, I therefore conclude on this main issue that while the proposal would be contrary to Policies 2, 3, 4 and 26 of the HDPF having regard to its position within the countryside and the spatial strategy for the District, there are material considerations which mean that the development would provide a suitable location for housing.

Arun Valley SPA, SAC and Ramsar Site

19. The information before me indicates that the SPA is classified for its wintering birds including Bewick swan, its assemblage of wintering wildfowl and the supporting wetland habitats. The SAC is notified for the little whirlpool ram's horn snail and its supporting wetland habitats, while the Ramsar Site is listed for its wintering birds, rare invertebrates, rare aquatic and wetland plants, and the supporting wetland habitats. Natural England has advised that it cannot be concluded that existing water abstraction within the SNWSZ is not having an adverse impact on the integrity of the Arun Valley sites through reduced water levels and potential water quality impacts. It has also advised that further development with a requirement for additional abstraction in the SNWSZ is likely to have an adverse impact on the sites.
20. The appeal site is within the SNWSZ. From the information before me, the proposal would have a likely significant effect on the Arun Valley sites either alone or in combination with other plans and projects through additional water abstraction to meet increased water demand on the site associated with the 73 dwellings proposed.
21. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations'), it is therefore necessary for me as the

- competent authority to consider the effect of the proposal on the integrity of the Arun Valley sites within the framework of an Appropriate Assessment (AA).
22. To be able to determine that a proposal would not be likely to adversely affect the integrity of the Arun Valley sites, advice from Natural England indicates that it would need to demonstrate that it would achieve no net increase in water consumption, or 'water neutrality'. In advance of a strategic solution, Natural England has advised that demonstrating water neutrality may be done through a combination of water efficiency measures and offsetting.
23. In undertaking the AA, I have had regard to the appellant's Shadow Habitats Regulation Assessment dated April 2022 ('SHRA') which includes at Annex 11 a Water Neutrality Statement dated 5 April 2022 ('WNS'), the UU, as well as comments made by the Council. This information was also subject to consultation with Natural England as the relevant Statutory Nature Conservation Body, albeit no representations were received in response.
24. The WNS estimates that the proposal would increase demand for water at the site by 14,827.04 litres per day. To help mitigate the increased demand, rainwater harvesting is proposed, and the WNS indicates that this would reduce the mains water demand at the site to 9,100.34 litres per day. This is the water use that would then require offsetting to achieve water neutrality. The Council has not raised specific concerns in relation to the calculation of water demand associated with the development, and I have no firm reason to find that the assessment of water demand requiring offsetting is unrealistic or otherwise inappropriate.
25. To offset the increase in water demand at the appeal site, the appellant proposes to retrofit 227 homes managed by the Raven Housing Trust ('RHT') in the Crawley Borough Council administrative area with water efficient fixtures and fittings. The appellant suggests that this would provide for a reduction in water consumption of 33 litres per person per day, and an overall water saving of 13,077.24 litres per day which would offset the water demand associated with the appeal development.
26. However, I cannot be sure from the evidence before me that water efficient fixtures and fittings have not already been installed to any of the RHT properties on an individual basis, and the lack of firm detail of existing water consumption rates means that I share the Council's concerns that the proposed efficiencies may not generate the suggested savings.
27. Moreover, even though they were invited to comment on the Council's concern that RHT would need to be signed up to an agreement to provide water efficiency measures before any approval is granted, the appellant has not provided details of any discussions that have taken place with RHT considering the suggested retrofitting measures, far less information to show that formal agreement has been reached or even to demonstrate that such an agreement would be forthcoming. Nor does the evidence before me provide firm details to demonstrate how retrofitting works could realistically be scheduled and carried out, bearing in mind the occupation of the properties by different households irrespective of their ownership. In the absence of this information, I find I can additionally have little confidence that the suggested offsetting measures could be effectively implemented.

28. The UU includes obligations relating to water neutrality, and would require that a detailed Water Neutrality Scheme is submitted to the Council and approved before the submission of any reserved matters application. The Scheme would be required to include a set of measures to achieve water neutrality at the development (or a phase thereof); timescales for implementation and delivery of these measures; procedures for monitoring and review of the measures, details of management and maintenance of the measures; and, if applicable, a copy of a water offsetting agreement entered into by the site owner and a third party owning land in the SNWSZ to provide water offsetting measures.
29. However, the national Planning Practice Guidance on Appropriate Assessment advises that mitigation measures need to be sufficiently secured and likely to work in practice¹ and I need to be convinced the proposal is capable of achieving water neutrality. Given my concerns above, I am not satisfied from the evidence before me that there is sufficient certainty that effective mitigation could realistically be secured for the development to offset the additional water demand at the site to achieve water neutrality. As a consequence, I am not persuaded that this issue could in this case be reasonably deferred to be addressed through the provisions of the UU and I find that there is insufficient certainty to conclude that adverse effects on the integrity of the Arun Valley SAC, SPA and Ramsar Site can be excluded.
30. Natural England has not provided specific comments on the appeal proposal, but as the competent authority, I need to be satisfied that the integrity of the European sites would not be adversely affected by the proposal. For the reasons above, I am not sufficiently satisfied that effective mitigation could be secured to achieve water neutrality, and I conclude taking a precautionary approach that adverse effects on the integrity of the Arun Valley SAC, SPA and Ramsar Site can not be excluded. In these circumstances, I find that Regulation 63(5) of the Regulations precludes the proposal from proceeding. The proposal would also conflict with Policy 31 of the HDPF which, amongst other things, sets out that permission will be refused where development is anticipated to have an adverse impact on biodiversity sites such as SPAs and SACs, unless appropriate mitigation measures are provided. It would also be contrary to the Framework's objectives for the protection of biodiversity and the conservation of the natural environment.

Planning Obligation

31. In addition to obligations concerning water neutrality noted above, the UU includes a series of obligations that would provide for a minimum of 35% on-site affordable housing in accordance with a detailed scheme to be submitted to as part of a reserved matters application. Policy 16 of the HDPF sets out that the Council will require 35% of dwellings on sites of 15 or more dwellings to be affordable. In this context and on the evidence before me, I am satisfied that the obligations to secure affordable housing on the site are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development. Accordingly, they would meet the tests within Regulation 122 of the Community Infrastructure Levy Regulations 2010 ('CIL Regulations') which are reflected at paragraph 57 of the Framework.
32. The UU also includes obligations requiring 4 plots within the development to be custom/self-build plots, with details of the area and location of these plots and

¹ Paragraph: 004 Reference ID: 65-004-20190722

the terms on which they will be marketed to be submitted as part of a reserved matters application. Further obligations within the UU relate, in summary, to a scheme to deliver air quality mitigation; a travel plan and measures to encourage sustainable travel; and highway works including improvements to pedestrian crossings in the vicinity of the site.

33. The Council has welcomed the provision of custom/self-build housing as a benefit of the development which would contribute to meeting housing needs in the District, and I have no firm reason to take a different view. Policy 39 of the HDPF further sets out that release of land for development will be dependent on there being sufficient capacity in local infrastructure to meet additional requirements from the development or suitable mitigation arrangements for the improvement of services. On the evidence before me, these further obligations would also 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, and would meet the tests at Regulation 122 of the CIL Regulations.
34. The Council has commented that the definition of 'Marketing Appropriately' within the UU which applies to the custom/self-build plots should include reference to a marketing strategy being agreed with the Council. In the absence of such a reference, it is unclear what marketing appropriately would comprise, and it seems to me that under the terms of the UU, there could be a scenario where the custom/self-build plots could be used for the construction of open market units without having first been appropriately marketed for custom/self-build. Although I am not convinced this outcome would be most probable, the weight that I afford to the benefit of the provision of these plots is reduced somewhat. Nevertheless, I do not consider that the omission would be so fundamental to the effectiveness of the obligation overall in securing what is intended that the obligation, or the benefit of the custom/self-build housing, should be wholly disregarded.
35. While I have found that the UU would not adequately address the effect of the proposal on the Arun Valley SAC, SPA and Ramsar Site, I find for these reasons that the UU would address the second reason for refusal as amended by the Council at appeal stage. I have therefore taken the obligations secured into account as material considerations.

Other Matters

36. The information before me indicates that the appeal site is located within the sustenance zone of the Mens SAC which is notified for Barbastelle bats, and for Atlantic acidophilous beech forests with Ilex and sometimes also Taxus in the shrub layer habitats. The appellant's SHRA concludes that the proposal would not adversely affect the integrity of the Mens SAC, while the Council considered that the proposal would not have a likely significant effect. However, given the harm identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further and in light of the provisions of the Regulations as it could not alter my decision.
37. I have had regard to representations made by interested parties which raise additional concerns including regarding traffic levels, highway safety, pressure on local infrastructure, harm to trees, harm to the landscape, and impacts on neighbouring living conditions. However, while I note the strength of feeling, none of the matters raised alter my conclusions on the main issues.

Planning Balance

38. I have already found that the proposal would make effective use of the site to deliver 73 dwellings, and that this benefit would attract significant weight. I also give significant weight to the provision of affordable housing to meet identified needs in the District. The provision of 4 self/custom build plots is a further benefit of the proposal, albeit that the weight that I give to this benefit is reduced for the reasons set out above.
39. There would be direct and indirect social and economic benefits of the development, both short-term during construction and longer-term on occupation. These would include employment opportunities related to construction, and expenditure by future residents that would be likely to help to support local services and facilities and contribute to the economy. I attribute significant weight to these benefits. Future occupiers would also have access to a range of local services and facilities and employment in Southwater, as well as nearby public transport, with improvements to footpath connections in the vicinity of the site. The accessibility of the site would reduce the need to travel by private vehicle which would contribute to the Framework's objectives of reducing emissions and moving to a low carbon economy.
40. The appellant refers to suggested ecological enhancement measures which would provide for a biodiversity net gain at the site of 32.41% in habitats and 33.27% in hedgerows, and I give significant weight to this benefit. I also note suggested measures to build resilience to climate change and to reduce carbon emissions, including energy efficiency in excess of current Building Regulations requirements and provision of electric vehicle, bike and scooter charging. However, it seems that many of the measures would be required in any case to comply with development plan and building regulation requirements which limits the extent of the benefit, and I give it moderate weight.
41. Areas of open space and play would be provided as part of the development, and the appellant states that there would be a trim trail within the perimeter landscaping. However, it is not clear that these elements would make a significant contribution to meeting existing identified needs in the wider area rather than addressing needs generated by the development itself, and I do not consider them a significant benefit of the proposal.
42. On the other hand, I have found that the proposal would adversely affect the integrity of the Arun Valley SPA, SAC and Ramsar Site. Accordingly, footnote 7 and paragraph 182 of the Framework confirm that the presumption in favour of sustainable development at paragraph 11 of the Framework would not apply.
43. Notwithstanding the shortfall in housing supply and the benefits of the proposal, the adverse effect of the development on designated nature conservation sites and conflict with the Regulations is a matter of overriding concern.

Conclusion

44. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR