



Appeal Decision

Inquiry held on 26 March 2013

Site visit made on 27 March 2013

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 3 June 2013

Appeal Ref: APP/D3830/A/12/2184589

15 Woodlands Close and land to the rear of 15 Woodlands Close, Crawley Down, Crawley RH10 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Mark Jackson, Gleeson Developments Ltd against Mid-Sussex District Council.
 - The application Ref 12/00672/OUT, is dated 23 February 2012.
 - The development proposed is up to 46 dwellings (Class C3) of which up to 30 percent will be affordable, landscaping, up to 110 car parking spaces, associated open space, the demolition of 15 Woodlands Close and formation of a new access junction with Woodlands Close and Kiln Road.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 46 dwellings (Class C3) of which up to 30 percent will be affordable, landscaping, up to 110 car parking spaces, associated open space, the demolition of 15 Woodlands Close and formation of a new access junction with Woodlands Close and Kiln Road at 15 Woodlands Close and land to the rear of 15 Woodlands Close, Crawley Down, Crawley RH10 4JZ in accordance with the terms of the application, Ref 12/00672/OUT, is dated 23 February 2012, subject to conditions set out in the attached schedule of conditions.

Preliminary matters

2. The application that led to this appeal is in outline with access to be considered at this stage and all other matters reserved for later consideration.
3. A section 106 agreement between Mid Sussex District Council and West Sussex County Council and R & V Sturley and J & V Sutton providing for affordable housing, improvement works to local footpaths and contributions towards informal and formal recreational open space, community infrastructure, education and library provision, and improvements to highways and transport infrastructure was submitted at the Inquiry.

Main Issues

4. The Council's North East Area Planning Committee resolved on 18 October 2012 that had it still been in a position to do so it would have refused the application for the following reasons:

- i) *Overall, it is considered that the proposed development would comply with the National Planning Policy Framework and relevant development plan policies, however the site falls within 7km of the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC) which is a European Site of Nature Conservation Importance. As no Appropriate Assessment has been carried out the LPA are not satisfied that the proposed development would not have an adverse impact on the Ashdown Forest SPA and SAC. The presumption in favour of Sustainable Development within para 14 of the NPPF does not apply and an objection is raised on that basis. In addition the Council are concerned that the use of Burleigh Wood as a potential SANG to mitigate against the impact on the SPA/SAC would not be compatible with its existing biodiversity interest. The proposal would be contrary to the Conservation of Habitats and Species Regulations 2010, the NPPF and policies NRM5 of the SE Plan and C5 of the Mid Sussex Local Plan.*
- ii) *In addition the absence of a signed and dated S106 Agreement the proposal does not satisfy the requirements of Policies G3, R3 and H4 of the Mid Sussex Local Plan in respect of infrastructure requirements to service development and affordable housing as supplemented by the Council's Supplementary Planning Document 'Development and Infrastructure' dated February 2006 and therefore an objection is raised until such time as a signed and dated S106 Agreement, in a form that is acceptable to both the District Council and West Sussex County Council, has been submitted as part of the appeal process.*
5. It was confirmed at the Inquiry that following this resolution the appellant and the Council have reached an agreement that, subject to providing a package of environmental mitigation measures agreed with Natural England, the provision of affordable housing and requested contributions towards infrastructure, the Council no longer opposes the appeal scheme.
6. I consider the main issues are:
- the effect of the proposed development on the character and appearance of the countryside and on the East Grinstead and Crawley Strategic Gap
 - the effect of the proposed development on the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC),
 - the effect of the proposed development on the supply of housing in the District, and
 - the effect of the proposed development on local infrastructure.

Reasons

Countryside and the strategic gap

7. With the exception of no.15 Woodlands Close, the appeal site immediately adjoins but lies outside the settlement of Crawley Down and within the East Grinstead and Crawley Strategic Gap. Policy C1 of the Mid Sussex Local Plan

(LP) 2004 seeks to resist the extension of built-up areas beyond the defined settlement boundaries, protecting the countryside for its own sake. LP Policy C2 seeks to safeguard strategic gaps from development with the objectives of preventing coalescence and retaining the separate identity and amenity of settlements.

8. The site comprises for the most part an area of grassland and an adjoining area of ancient woodland known as Burleigh Wood. The grassland would be built upon and the built-up area thereby extended into the countryside. As such the proposal would conflict with LP Policy C1. However, the housing would be enclosed to the north and west by residential properties on Hazel Way and Woodlands Close, and to the east in part by the retained woodland. If visible at all from Burleigh Lane and the countryside to the south-east, the houses would be seen in the context of existing development with the woodland forming a strong green edge to the east. The impact of the development on the character and appearance of the wider countryside would therefore be small. For the same reasons I consider there would be no readily perceptible diminution of the separate identity of Crawley Down or an apparent contribution, either on its own or cumulatively, to coalescence with other settlements. Whilst the proposed development would lie within the strategic gap it would not thus conflict with the objectives of LP Policy C2.

Ashdown Forest SPA and SAC

9. The designation of the Ashdown Forest SPA is principally concerned with the protection of 2 bird species, the Dartford warbler and the nightjar, and the SAC designation with Northern Atlantic wet heaths, European dry heaths and great crested newt. Potential impacts on the interest features of the Ashdown Forest SPA and SAC from development within the Mid Sussex District have been identified as disturbance from increased recreation activities, particularly dog walking, and air pollution from increased traffic. The appeal site lies approximately 6.2 kilometres (km) from the Ashdown Forest SPA. It is thus within the 7 km buffer zone identified by Natural England within which residential development has the potential to have a significant effect alone or in combination with other developments on the interest features for which the Ashdown Forest has been classified.
10. A survey of 544 households in Crawley Down commissioned by the appellant identified a dog ownership rate of 11 percent. Based on this and the visit rates established by the survey, it is calculated that the proposed 46 dwellings would generate 1.3 visits to the Ashdown Forest per week or 0.19 visits per day. It is considered that this would not on its own have a significant effect on the SPA. In combination with up to 500 new dwellings that could come forward in the District within the 7 kilometre zone¹ however the appellant acknowledges that there would be a risk or probability of a significant effect. A package of mitigation measures has therefore been proposed. These include works to increase the recreation capacity of the Worth Way and Sussex Border Path which run close to the appeal site. The survey identified these as popular dog walking routes for existing residents of Crawley Down with 85 percent of dog owners visiting the Worth Way and 41 percent visiting the Sussex Border Path. The proposed works would include re-surfacing, drainage improvements and the replacement of stiles with gates. These would make what are already

¹ Figures taken from the Draft Habitats Regulations Assessment of the Mid Sussex District Council Revised Draft District Plan (UE Associates 2012)

popular walking routes easier to use and by improving accessibility, more attractive to walkers with and without dogs. The works would be secured by the submitted s106 agreement.

11. In addition conditions agreed by the parties would provide for a footpath link from the development to the Sussex Border Path and the provision of wildlife information leaflets for all new residents. Future occupiers of the development would thus be made aware of the need to protect the fragile habitats of the Ashdown Forest and have a direct off road route from the proposed housing development to the local footpath network. As such the scheme would provide both a disincentive to dog walkers to use the protected heathland and easy access to attractive walking areas close by. Together I consider these measures would have the effect of diverting dog walkers from the Ashdown Forest to the local footpath network.
12. On this basis, and in view of the very small percentage contribution to traffic on the main routes into the Ashdown Forest that would arise from the development, I concur with the view taken by Natural England that that the proposed development would not be likely to have a significant effect on the interest features for which the Ashdown Forest SPA and SAC has been classified and that an *Appropriate Assessment* is not therefore required.
13. Use of Burleigh Wood is not proposed as part of the mitigation strategy. The development would provide limited access to the woodland. A condition requiring approval and implementation of an Ecological Management Plan would ensure that the nature and extent of this access, as well as management of the woodland and its habitats, and management of the ecology of the site as a whole is controlled. Prior approval of design details and the Management Plan would provide a mechanism for ensuring that bat foraging areas within the woodland are not adversely affected by light and disturbance. That proposed development would provide the opportunity to enhance the long term ecological value of the woodland is a benefit of the scheme.
14. I conclude therefore that, with the measures provided for in the s106 and conditions, the proposed development would have no risk or probability of a likely significant effect on the interest features for which the Ashdown Forest SPA and SAC has been classified, and would result in no significant adverse effect on the wildlife habitats of Burleigh Wood. I find no conflict therefore with the nature conservation objectives of the National Planning Policy Framework (the Framework) or LP Policy C5.

Housing supply

15. The housing policies of the LP do not provide housing numbers beyond 2006 and the Council accepts that they are therefore out of date. The Council intend to bring forward the Mid Sussex District Plan. However this plan is in draft form and at an early stage on its route to adoption, and the housing numbers it contains are the subject of objections. I agree with the Council that little weight can therefore be attached to it.
16. Whilst the Regional Strategy for the South East (SEP) has now been revoked it is agreed by the Council that it provides the most recent source of housing figures that have been tested at examination. Paragraph 47 of the Framework requires local planning authorities to identify a 5 year supply of housing land to meet their housing requirements. There is no dispute that the Council has

failed to meet the annual SEP requirement of 855 dwellings in every year since 2006 and that in these circumstances an additional 20 percent buffer should be applied. It was agreed by the main parties at the inquiry that the Council is only able to demonstrate a less than 2 year supply of housing land. This represents a very considerable shortfall in provision.

17. The Northern West Sussex Housing Market Assessment 2009 identified an annual unmet affordable housing need in the District of between 357 and 477 households. The Council's Housing Development Officer noted that in August 2012 that, based on the Housing Register, a high level of unmet housing need existed in Crawley Down even when units currently under construction in Grange Road and Sunnymede and Buckley Place were taken into consideration. The proposed development would include 30 percent affordable units in accordance with LP Policy H4 secured by the submitted s106 agreement. That the proposed development would contribute to meeting the need for market and affordable housing in the District weighs substantially in its favour.

Local infrastructure

18. Very many of the properties in the roads adjacent to the site have on-plot parking. It is evident nevertheless that many vehicles are parked on the street particularly in the evening. The proposed development would include up to 110 parking spaces. This would be in excess of 2 spaces per dwelling and it is unlikely therefore that the proposed development would add significantly to existing parking pressure.
19. The appeal scheme includes a proposal to provide site access via no.15 Woodlands Close with amendments to the junction of Woodlands Close with Kiln Road. The design of the road layout, including visibility splays have been agreed with the Highway Authority and accord with Manual for Streets guidance. The impact of additional traffic movements on local roads has been assessed on the basis that the majority of vehicles would be expected to use the Grange Road – Turners Hill Road junction. The number of vehicle movements would nevertheless fall below the threshold considered by the Highway Authority to result in a material impact. I note that the Highway Authority also took into consideration the improvements to this junction secured in association with another housing development. Whilst I understand local residents concerns with regard to the potential adverse impact of increased traffic on the safety of road users, I have no reason to disagree with the conclusions of the Authority's professional officers that there is no significant objection to the proposal in these terms.
20. In its consultation response Southern Water advised that there is currently inadequate capacity in the local foul sewage network to accommodate increased flows resulting from the proposed development. It raises no objection to the scheme however noting that a legal mechanism exists whereby infrastructure works to provide sufficient capacity can be requested by the developer. With regard to surface water drainage, a Sustainable Urban Drainage System is proposed including detention basins designed to prevent increased in run off from the site. In accordance with the suggested condition the design of the drainage schemes would require approval before construction commenced.

21. Local schools do not have the capacity to accommodate children likely to occupy the proposed housing. The submitted s106 agreement however makes provision for a contribution towards further school provision and the Education Authority has a strategy for delivering increased capacity at both primary and secondary level within the locality.
22. The waiting time for appointments with doctors at the surgery has been raised by a number of residents who are concerned that new residents would add to these difficulties. NHS Sussex is however unequivocal in its assertion that more than sufficient capacity exists in the Crawley Down Health Centre for this and future developments.
23. I find nothing in these respects therefore to weigh significantly against the proposed development.

Conclusion

24. The planning authority cannot demonstrate a 5 year supply of housing land. Having regard to paragraph 49 of the Framework, LP Policies C1 and C2 which in effect restrict the provision of housing, must therefore be considered out-of-date. Whilst I note that the Council now intends to move forward towards adoption of the District Plan I cannot for the reasons given give it significant weight. The Neighbourhood Plan is not yet even in draft form, and to this too I can therefore give very little weight.
25. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development, stating that where relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole, or specific policies in the Framework indicate development should be restricted.
26. Having considered the nature of the proposed development and the mitigation measures that form part of the proposal, I have concluded that an appropriate assessment under the Habitats Directive is not required. Paragraph 119 of the Framework does not therefore exclude the appeal scheme from the presumption in favour of sustainable development.
27. In considering an appeal in Adderbury ref APP/C3105/A/12/2168102 the Inspector reached a 'finely balanced' conclusion that the provision of housing in a District where there exists an under supply of housing land was not sufficient to justify the development proposed. The circumstances of that case differ however from that before me. The site was clearly visible from close public views including a public footpath and the Inspector was not satisfied that the illustrative plan represented the basis of good design.
28. I have found very little harm in respect of impact on the countryside and the strategic gap. And the concerns raised by local residents with regard to impact on local infrastructure do not weigh significantly against the scheme. The site is approximately 300 metres from the village centre where future residents would have ready access to a number of shops and facilities, and the Worth Way provides walking and cycling access to Crawley and East Grinstead. Bus and rail services are also available within a reasonable distance. Notwithstanding the fact that many residents choose to use cars, I concur with the view taken by the Highway Authority that the site can thus be considered an accessible location for residential development. In these circumstances,

having taken into consideration all other issues raised by local residents, I conclude that the contribution the proposed development would make towards meeting the identified need for market and affordable housing is a benefit that weighs overwhelmingly in favour of allowing the appeal.

Section 106 Agreement

29. An assessment carried out in 2006 identified a shortfall in outdoor play space provision in the District. Future residents of the proposed development would place an additional burden on these facilities and The Haven Centre community building in Crawley Down. There is also an identified need to extend parking facilities in the village centre to meet the needs of a growing local population. Contributions sought towards these facilities are related to the number of dwellings proposed in accordance with the Council's adopted Supplementary Planning Document.
30. As set out above the proposed development would give rise to the need for additional education provision. It would similarly place additional demands on library facilities. Contributions towards their provision directly related to the number of dwellings proposed are therefore both reasonable and necessary. Contributions towards sustainable transport infrastructure related to the number of the car parking spaces provided on the site will be used to provide facilities that promote sustainable transport choices by increasing pedestrian safety within the village. The provision of a fire hydrant is necessary to ensure an adequate supply of water for fire fighting and thus to protect the safety of future residents. Funding of the ecological enhancement works to the Worth Way and Sussex Border Path will enable the proposed mitigation measures to be fully implemented.
31. I consider the agreed contributions are thus necessary to make the development acceptable in planning terms and directly, fairly and reasonably related in scale and kind to the development proposed. I have therefore taken them into account in coming to my decision.

Conditions

32. Planning permission is granted in outline and conditions requiring submission and approval of reserve matters are therefore necessary. Prior approval of materials, hard and soft landscaping, boundary treatments and refuse and recycling storage facilities will ensure that the built and landscape character and appearance of the area is respected. A Landscape and Ecological Management Plan is necessary to safeguard the ecology of the area and protect, manage and enhance the ecological value of the woodland.
33. As noted above, there is currently insufficient capacity in the sewage system to accommodate increased flows. A condition requiring prior approval of drainage schemes will ensure that provision is made before the dwellings are occupied and that surface water does not result in any increased flood risk. A Construction Management Plan and limits on hours of construction are necessary to protect adjacent residents from unreasonable disturbance and disruption.
34. Conditions requiring construction of the site access and retention of the visibility splays, as well as provision and retention of car parking and cycle storage facilities are necessary in the interest of highway safety and the promotion of sustainable transport choices. A condition requiring remediation

of any contamination found is necessary to protect future residents from harm. Whilst I note the conclusions of the appellant's desk based Archaeological Assessment, it is the County Archaeologist's view that the presence of archaeological sites in the vicinity indicates that buried archaeological features within the site cannot be ruled out. A condition requiring a scheme of investigation is therefore necessary.

35. Generation of at least 10 percent of the energy from renewable or low carbon sources will contribute to the sustainability of the development. Provision of the footpath link to the Sussex Border Path and the supply of wildlife information leaflets to residents are required as part of the ecological mitigation measures necessary to avoid the risk or probability of a likely significant effect on the interest features for which the Ashdown Forest SPA and SAC has been classified.

Olivia Spencer

INSPECTOR

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until a schedule (and where requested samples) of the materials and finishes to be used in the construction of the external surfaces, windows and doors of the buildings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include existing and proposed finished levels or contours; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc). Soft landscaping details shall include identification of all existing trees and hedgerows on the land, with details of those that