



Appeal Decision

Hearing held on 23 August 2023

Site visit made on 23 August 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 5 October 2023

Appeal Ref: APP/Z3825/W/23/3315111

Land north of Lyons Road, Lyons Road, Slinfold, West Sussex RH13 0RX

- 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 Mr Keeley of Gleeson Land Ltd against the decision of Horsham District Council.
 - The application Ref DC/21/2481, dated 1 November 2021, was refused by notice dated 22 July 2022.
 - The development proposed is erection of up to 45 dwellings (including 35% affordable housing), with associated access and highways works, drainage and attenuation, open space and landscaping, all matters reserved except for access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with all matters reserved except access. The appellant has however indicated that the scheme should be determined with reference to the submitted landscape parameter plan. The latter subdivides the site into various zones and generally defines the way in which they would be treated. This therefore provides a broad guide as to how the development would be laid out and landscaped.

Main Issues

3. The main issues are:
 - whether the site is a suitable location for the proposed development having regard to its effect on the character and appearance of the area; and
 - the effect of the development on habitats sites.

Reasons

Background

4. Policies 2 and 3 of the Horsham District Planning Framework 2015 (the Local Plan) set out the Council's settlement strategy. This seeks to achieve a sustainable distribution of development, and maintenance of the district's rural character, and is partly achieved by focussing new development within defined built up area boundaries (BUABs). The site is located outside the BUAB of Slinfold, and insofar as Policies 4 and 26 of the Local Plan set out criteria for the consideration of development in such cases, the appeal scheme fails. Consequently, it would conflict with Policies 2, 3, 4 and 26 of the Local Plan.

5. The settlement strategy is based on dated housing numbers and the Council currently lacks a demonstrable 5-year supply of deliverable housing sites (5YHLS). It has therefore prepared a Facilitating Appropriate Development document (FAD) for use in assessing proposals, including those outside BUABs. The FAD does not form part of the development plan. Its use is however clearly intended to indicate where flexibility in relation to the location of development could be appropriate. In this context it includes a set of slimmed down criteria drawn from Policy 4, with which the scheme would nonetheless also conflict.
6. In all the above regards the Council's specific locational concern is the effect that the development would have on the character and appearance of the area.

Character and appearance

7. Slinfold is a modestly sized rural settlement made up of 2 main parts which are roughly subdivided by Lyons Road. These comprise the historic village core, which accounts for most of the northern part of the settlement, and a larger block of largely modern estate housing towards the south. Whereas housing towards the south is predominantly suburban in character and laid out around cul-de-sacs, most dwellings to the north front either The Street or Lyons Road. Within this context, the site is located on the east side of the northern part of the village.
8. The BUAB is tightly drawn, largely corresponding to the layout of development adjacent to the site. The north-south access immediately to the west of the site forms a strongly distinct edge, made more robust by the recent housing development to the north of the cricket ground. Similar is true of the garden boundaries belonging to the short ribbon of houses fronting Lyons Road to the south, which within most views logically includes those belonging to The Limes House. Beyond these edges, fields, woodland and the sparse nature of residential development together mark an abrupt and clearly perceptible shift in character to that of open countryside.
9. The site plays a key role in this transition, forming part of a large field most recently used as grazing, the east side of which is fringed by a band of woodland. Similar fields are located to the north. Given that the west side of the site is defined only by a fence, and the north side is entirely unenclosed, most of it is clearly visible from the adjacent north-south access and from public footpaths to the north. The site's exposure does not extend far into the broader landscape. Even so, the site forms a visually important part of the rural setting of the northern part of the village.
10. At present the site is less visible from Lyons Road given the height of the boundary hedge. However, this presumably sees change in winter, and/or if the hedge is trimmed. Either way, to the extent that the site has a frontage on Lyons Road this again falls beyond the perceived edge of and point of entry to the village. This is apparent travelling both in and out of the village, but most clearly so travelling out given the lack of buildings within the forward view. Two domestic accesses and a village sign further to the east don't fundamentally alter this impression.
11. The development would therefore occur beyond the established edge of the village, within space which forms an important part of its immediate rural setting. This would be highlighted by its single point of vehicular access off Lyons Road, which would fall beyond the perceived point of entry to the village.

The proposed dwellings would themselves be arranged along a cul-de-sac, which would be atypical of the prevailing pattern. This and the above would provide the development with a somewhat insular character, further accentuated by its separation from dwellings fronting Lyons Road by a group of paddocks. The poor level of integration would not be resolved by provision of a footpath link along the northern edge of the site. As the eastward sprawl of suburban development would furthermore be at odds with the existing settlement form, the development would not be perceived as a natural or organic extension of the village, but as an incongruous addition. This would be apparent in public views from outside the site, and would be experienced in moving between the development and the rest of the settlement. The development would therefore cause significant harm to the character and appearance of the area.

12. The parameters plan outlines a strategy based on visual containment through landscaping. However, whilst this might assist in screening, it could equally accentuate the poor level of integration.
13. Exposure of the development within the broader landscape would be limited. This would not however alter the harm that it would cause to the rural character, identity and setting of the northern part of the village.
14. A parallel has been drawn to the layout of modern estate developments in the southern part of the village. However as outlined above, these are not characteristic of the northern part of the village, and even in the south they are generally accessed from points well within the built up area of the settlement.
15. As noted above, a small housing development is nearing completion to the north of the cricket ground. This too is arranged around a cul-de-sac. However, it occupies a smaller site, it is well contained by the access to its east, and it has been successfully integrated within the form of the established built-up area. Given these differences, and in view of my assessment above, the development in question does not indicate the acceptability of the appeal scheme.
16. The field of which the site forms part is included within a parcel identified by the Council's Landscape Capacity Study 2021 (LCS) as having low-moderate capacity for small scale housing development. But though potential for housing development has therefore been previously identified, the LCS provides no clear indication of where within the parcel this might be appropriate, or what form such development should take. The development would not otherwise be 'small scale' relative to its context. As such, my findings above are unaltered.
17. The northern boundary of the site would follow the line of an old field boundary, and a significant amount of planting is implied by the parameters plan. Though this planting might have some broader biodiversity benefit, this would not directly mitigate the adverse effects identified above.
18. For the reasons outlined above I conclude that the site would be an inappropriate location for the proposed development given its adverse effects on the character and appearance of the area. Aside from the policy conflict already identified above, the development would additionally conflict with Policy 25 of the Local Plan, which amongst other things seeks to secure development that protects, conserves and enhances landscape and townscape character.

Habitats sites

19. The site falls within the 12km conservation zone defined around the Mens Special Area of Conservation (Mens SAC). It has been identified as being in use by Barbastelle bats, which are a qualifying feature of the Mens SAC. The site also lies within the Sussex North Water Supply Zone (the Zone), in relation to which an existing adverse effect on the Arun Valley SAC, Special Protection Area and Ramsar site (the Arun sites) was identified by Natural England (NE) in 2021 due to water abstraction. Likely significant effects on the integrity of the habitats sites as a result of the development cannot therefore be excluded. In accordance with the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations) an Appropriate Assessment (AA) is therefore required.
20. Two AAs have been undertaken by the Council, albeit that related to the Arun sites pre-dates the current package of proposed mitigation measures. I have taken the Council's AAs, including any previous consultation with NE into account within my own assessment below.

(a) Mens SAC

21. The designation of the Mens SAC relates primarily to woodland, though additionally covers Barbastelle bats. Its conservation objectives seek to maintain or restore integrity, including that of qualifying features. Disturbance of bats would be at odds with these objectives.
22. Mitigation has been proposed. This includes no development within the part of the site currently used by bats, and the installation of sensitive lighting elsewhere. This could be secured by condition, and allows me to conclude that there would be no adverse effect on the integrity of the Mens SAC.

(b) Arun sites

23. The designation of the Arun sites relates to birds, invertebrates and to aspects of the underlying wetland habitat. Where available, conservation objectives again seek to maintain or restore integrity, including that of qualifying features. Increased demands for water would be at odds with these objectives.
24. There is no strategic solution currently in place, and insofar as NE's 2021 Position Statement (PS) represents its substantive advice on the matter in the interim, I have not sought further comment. The PS outlines the potential for developments to demonstrate water neutrality. This includes the application of strict targets and efficiencies in new development, and offsetting by fitting water saving measures to existing buildings. The appellant has proposed a combination of efficient fittings and a centralised system of grey water recycling for the proposed development, and installation of a wide range of conservation measures at a school within the Zone. These measures would comprise the harvesting of rainwater and grey water, and the fitting of more efficient taps, toilets and appliances.
25. Measures proposed for the school and the accompanying calculations were the subject of repeated modifications throughout the appeal process. Based on the scheme put forward within Version 12 of the submitted Water Audit Report (WAR) both parties have identified the potential for savings that would exceed the amount of water use whose offsetting is required. However, the Council's figure is significantly lower than the appellant's, and therefore provides a smaller margin for error. In this regard, I have not been directed to any

- definitive guidance which sets out what a suitably precautionary margin for error might be.
26. As set out within the WAR, the system would involve installation and ongoing maintenance and monitoring of numerous components spread across the school site. Technical details such as flow rates and capacities have been defined with certainty. However, notwithstanding some reference to generalised measures drawn from BREEAM guidance, many of the projected savings lack supporting evidence in relation to the patterns of activity and use which underpin existing consumption. The calculations are therefore heavily reliant upon assumptions which might well be incorrect. They also cannot be considered immune to the ongoing effects of behavioural and organisational variables and change. More so perhaps given that they partly hinge upon the weather and children. This creates uncertainty.
 27. Construction activity would utilise water. At present this can be accommodated by a fall in construction activity since 2021. It is however hard to be sure whether the current level of activity is a reliable guide to that which might exist when the development came to be implemented. Though water could be tanked in to site or added to building products off-site, it is unclear how these measures would be secured. This adds some further uncertainty.
 28. The appellant states that uncertainty would be addressed by planning obligations, and insofar as the school lies within another district, the Council has identified a mechanism by which these could be enforced. However, the intended Section 106 agreement (S106) has not been completed, and a Unilateral Undertaking (UU) has been provided instead. As the school is not a party, its commitment to the scheme remains to be demonstrated and secured. Even assuming that it was, it is unclear how variables would be addressed and remedied through the long term operation of the scheme, and thus how water neutrality would be demonstrated in practice. Though the UU allows for further refinement of the scheme presented within the WAR, this raises questions over what form the finalised scheme might take. The UU would function to prevent the development from being commenced until at least some of these matters were addressed. But shifting the burden of proof to some point in the future neither does nor would satisfy the need for certainty at the point of undertaking an AA. Given that uncertainty remains, and use of a condition could not resolve the matter, I cannot conclude that likely significant effects on the integrity of the Arun sites would be mitigated.
 29. Alternative solutions which would have a lesser impact on the integrity of the Arun sites clearly exist. Whilst this might include the provision of the proposed dwellings on a site outside the Zone, my findings above indicate that a set of fully evidenced measures set within the context of a clear long term strategy might address the issue. Consequently, allowing the appeal would be contrary to Habitats Regulations, and thus unlawful.
 30. For the reasons set out above I conclude that the development would have a likely adverse effect on the integrity of the Arun sites due to a failure to demonstrate that the development would be water neutral.

Other Matters and Considerations

31. The scheme would conflict with the development plan taken as a whole. In the absence of a 5YHLS, the National Planning Policy Framework (the Framework)

however indicates that for the purposes of decision making the policies most important for determining the application are deemed 'out-of-date'. This is otherwise the basis for the Council's use of the FAD, as outlined above. Even so, to the extent that the policies with which I have identified conflict address landscape protection and appropriate design, I am satisfied that they broadly reflect similar considerations set out within the Framework. When assessed against the Framework itself, my findings in relation to the Arun sites furthermore provide a clear reason for refusing planning permission.

32. The development would provide a mix of market and affordable dwellings, the latter secured by the UU. Assuming deliverability, this would help to address shortfalls in the supply of both. In this regard the current shortfall in 5YHLS is significant, standing at 3 years. Whatever weight I attached to the related social and economic benefits it would however be incapable of outweighing the harm I have identified above.
33. Other claimed benefits, including provision of footpath and open space, the latter again secured by the UU, would principally be required to service the development itself. Whilst biodiversity benefits have also been claimed, aside from these being a general expectation, more meaningful enhancement could be achieved within the context of the site in its current use. My findings above thus remain unaltered.
34. Planning permission was partly refused on grounds that the site falls within a Minerals Safeguarding Area relating to brick clay and Horsham stone. It was subsequently resolved that the matter could be addressed by a condition securing further investigation and possible extraction. However, whilst the Council lifted its objection on that basis, the appellant rejected the proposed condition at the Hearing. Had I not resolved to dismiss the appeal for other reasons this would have been a matter requiring further consideration.
35. The application was accompanied by a Flood Risk Assessment which asserted that the whole of the site would fall within Flood Zone 1 once a review had been undertaken by the Environment Agency. Part of the site however remains within Flood Zone 2. As such, national policy and guidance indicates the requirement for application of the sequential test, but none has been undertaken. Again, had I not resolved to dismiss the appeal for other reasons this would have been a matter requiring further consideration.

Conclusion

36. For the reasons set out above the effects of the development would be unacceptable and would conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

APPEARANCES

For the Appellant

Daniel Frisby	DMH Stallard
Tapiwa Gavaza	Water Offsets
Chris Jenkinson	Aspect
Peter Rainier	DMH Stallard
Zack Simons	Counsel for the Appellant, Landmark Chambers

For the Council

Angela Moore	Senior Planning Officer
Adrian Smith	Major Applications Team Leader
Ines Watson	Landscape Architect

Interested Parties

Roger Butler	Local resident
Liz Cox	Local resident
Mark Cox	Local resident
Keith Feltham	Local resident
Mark Gibson	Local resident
Tony Hall	Local resident
Tricia Newton	District Councillor/Local resident

Documents presented at the Hearing

Statement of Common Ground
Draft S106
Flood map