
Appeal Decision

Site visit made on 17 August 2016

by Jane Miles BA (Hons) DipTP MRTPI

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

Decision date: 10 November 2016

Appeal Ref: APP/C3810/W/16/3146804

Brus Lodge, 28 Kingsway, Aldwick, West Sussex PO21 4DH

- 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 planning permission.
 - The appeal is made by Mr D Colley against Arun District Council.
 - The application ref: AW/367/15/PL, is dated 7 December 2015.
 - The development proposed is erection of one detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary & Procedural Matters

2. A previous scheme (for a plot and dwelling of different size) was dismissed on appeal in 2013¹. This current appeal was initially lodged on 18 March 2016 as an appeal against non-determination but the Council issued a refusal notice dated 23 March 2016, with three refusal reasons. The second refusal reason concerns the absence of provision for a contribution towards affordable housing. However in the light of a subsequent Court of Appeal (CoA) judgment² the Council has confirmed that it does not wish to defend that refusal reason: there is therefore no need to consider it further.
3. As confirmed in the Council officers' report on the application, the proposals were amended (by the submission of two additional drawings³) to indicate that existing trees and fencing on the site frontage would be retained, including two which are now protected by a Tree Preservation Order. I have determined the appeal on that basis. I have not taken into account the plans and documents listed as 'withdrawn' in the appellant's appeal documents⁴ other than as background information.
4. The revised site layout also indicates that the proposed dwelling would sit very slightly further back in its plot than on the withdrawn layout. In addition the footprint shape on the revised layout plan (with an indent on the western side) differs from that on the initial layout: it does not therefore match the submitted floor and elevation plans. There is also an inconsistency between the floor and

¹ Appeal ref: APP/C3810/A/13/2196126, decision dated 4 November 2013

² Secretary of State for Communities and Local Government v West Berkshire Council and Reading Borough Council [2016] EWCA Civ 441

³ Drawing nos. PL09 (existing site survey plan) and PL10 (proposed site layout - revised)

⁴ That is, drawing nos. PL01; PL02; PL09 (street scene elevations); PL-E2/E2A; LLD856/01, LLD856/02 and associated Arboricultural Impact Assessment and Tree Protection Statement

elevation plans, in that the west elevation (on drawing no. PL08) does not show either the lantern feature above the single storey conservatory to the rear or the projecting two storey element on the eastern side of the dwelling. Even so I am satisfied I have sufficient information to properly assess the proposal's key impacts. However, had my overall conclusion been in favour of the proposal, I would have invited written comments on how the inconsistencies might be addressed.

5. An application for costs, made by the appellant against the Council, is the subject of a separate decision.

Reasons

6. In the light of paragraph 2 above, the **first main issue** in this appeal is the effect of the proposals on the character and appearance of its surroundings in the Craigweil House Conservation Area (CA) and a locally designated Area of Special Character (ASC), and on the setting of locally listed buildings, taking account also of the heritage assets' significance. The **second main issue** is the effect of the proposals in relation to sites of international importance for nature conservation.
7. In addition the appellant maintains the saved policies of the Arun District Local Plan (2003) (LP) on which the Council relies are out-of-date, inconsistent with relevant parts of the more recent *National Planning Policy Framework* and also that they are policies for the supply of housing. Thus, in the absence of a five-year housing land supply, he indicates *Framework* paragraphs 14 and 49 apply to this proposal, and he also refers to another recent CoA judgment⁵ concerned with the application of those paragraphs. The Council in its response does not disagree with the appellant's assessment of various paragraphs in the *Framework* or the relevance of this CoA judgment.
8. It is apparent from that judgment that policies which are not up-to-date (pursuant to paragraph 49) should not necessarily be discounted altogether: it is for the decision-maker to determine what if any weight they should be given according to the particular circumstances in each case. I shall therefore begin with an assessment of the policy framework as it applies to this particular case, before considering the two main issues raised by the Council's refusal reasons.

Policy Framework

9. The starting point for assessing this proposal is the development plan which, in this case, is the 2003 LP. Saved LP Policy GEN7, cited in the Council's first refusal reason, sets out various criteria for assessing development proposals. Most are of the kind long-established for the purposes of ensuring a high standard of design and promoting sustainable forms of development, as now advocated in the *Framework*. However, inasmuch as failure to satisfy such criteria might preclude development being permitted, some of those criteria could be considered to have the effect of constraining the supply of housing land. That is particularly applicable to criterion (vi) which seeks to retain significant open or wooded areas⁶.
10. Saved LP Policy AREA2 (Conservation Areas) reflects the continuing statutory duty to pay special attention to the desirability of preserving or enhancing a

⁵ Suffolk Coastal District Council and Hopkins Homes Limited and SSCLG, Richborough Estates Partnership LLP and Cheshire East Borough Council and SSCLG, 17 March 2016 [2016] EWCA Civ 168

⁶ In full, [development will be permitted provided it] 'retains 'significant open or wooded areas which, in their own right, make a material contribution to the local environment'

conservation area's character or appearance. That duty applies irrespective of questions raised by the appellant about the merits of the designation. Saved LP Policies AREA1 and GEN22 relate, respectively, to locally designated Areas of Special Character (ASC) and to Buildings or Structures of Character.

11. In addition to being within the CA (a designated heritage asset) and an ASC, the appeal site adjoins three properties whose dwellings are identified as Buildings of Character in the Council's local list, such that they fall within the *Framework* definition of non-designated heritage assets. All three policies, or elements of them, might in some circumstances result in proposals for new housing being found unacceptable. Thus it is not unreasonable to treat all three as being relevant policies for the supply of housing.
12. Due to the age of the LP none of these LP policies refer to heritage assets as such or fully reflect those parts of the *Framework* relating to heritage assets. Nonetheless their content, as far as it goes, is broadly consistent with various elements of the *Framework*, as indeed is much of Policy GEN7. Consequently it is appropriate to continue to give weight to those elements of these four saved LP policies which are broadly consistent with the *Framework*.
13. Moreover, even when relevant development plan policies are out-of-date, the presumption in favour of development will not necessarily apply in every case. Where specific policies in the *Framework* indicate development should be restricted, such as those relating to heritage assets for example⁷, an initial assessment must be made against those policies. Depending on the outcome of that assessment it may or may not then be necessary to assess whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole.
14. Similar considerations apply to saved LP Policy AREA13 (Sites of International Importance for Nature Conservation). The policy does have the effect of constraining the supply of housing land, but it is broadly consistent with the *Framework*. Moreover the examples of 'specific policies' in Footnote 9 also include sites protected under the Birds and Habitats Directives and/or designated as Sites of Special Scientific Interest (SSSIs).
15. In addition the Council's refusal reasons cite emerging policies in the publication version of the Arun Local Plan 2011-2031 (2014) (eLP). The appellant's statement that examination of this Plan has been suspended until April 2017 at the earliest is not disputed by the Council. That status affects the weight to be given to eLP policies but, insofar as the eLP policies cited in this case are consistent with the *Framework*, it is reasonable to give them some modest weight.

Heritage assets, character, appearance and significance

16. It is necessary firstly to consider key characteristics of the CA and its significance as a designated heritage asset. Although Craigweil House was important for its many historical associations, including royal connections, the house itself was demolished in 1939. It is of greater relevance, in terms of the CA's overall character and significance and this particular proposal, that the Craigweil Estate retains the spacious planned layout that was created in the 1930s and was intended to serve individually designed houses on substantial plots amongst forest trees. Today the spacious layout, grassed roadside

⁷ As per Footnote 9 to paragraph 14 of the *Framework*

verges, mature trees and a variety of plot sizes and buildings in park-like settings all contribute positively to the CA's character and to its significance as a heritage asset.

17. That applies even though a majority of the houses on the estate were not built in the 1930s, but from 1950 onwards. The three houses around the appeal site (nos. 24 and 28⁸ Kingsway and no. 31 The Drive) do however date from the 1930s. As examples of the kind of development originally envisaged for the estate and also as examples typical of their period⁹ they contribute to the CA's significance. I find that to be the case despite the limitations of the various documents describing the CA, ASC and Buildings of Character¹⁰ in terms of specific reference to and analysis of heritage significance.
18. With regard to the untypically wide appeal site as a 'green' and undeveloped space, I appreciate it is a long-established feature at a prominent position in the street scene¹¹. However I have found little of substance to indicate it was specifically planned to remain undeveloped or that it contributes in any other way to the significance of the CA. Any house on the plot would have some impacts on the character of the space and street scene but, given the multitude of different options that could be put forward, it is by no means certain that those impacts would be harmful. Thus I find insufficient grounds to conclude that the erection of any dwelling on the plot would be unacceptable in principle.
19. However the dwelling proposed in this scheme would be a very substantial building extending almost to the plot boundary on both sides. Despite a single storey element adjacent to the boundary with no. 24 the design of the principal two storey block is such that it would appear as an incongruously large, bulky and unduly dominant built form. This would be apparent at a prominent location in the street scene, especially when frontage trees are not in leaf. Features such as the central arched window and two front dormers would not be sufficient to break up the overall building mass. Importantly, in matters such as the building style, the relatively flat expanse of its frontage and its window proportions, the new dwelling would neither reflect nor respect its neighbours at nos. 24 and 28, whose frontages incorporate more varied features of differing sizes.
20. I fully appreciate it is not necessary to replicate the design of the two neighbouring dwellings, and there are many different house designs elsewhere in Kingsway, including some large buildings close to side boundaries. On this particular plot however, between two 1930s dwellings which are significant as examples of the building styles and forms originally envisaged for the estate, it is especially important to ensure any new development would be a harmonious addition, respecting rather than competing with its neighbours. For the reasons set out above I find the appeal scheme would fall seriously short in these respects. It would detract from the setting of the non-designated heritage assets, most notably no. 28 to which it would be closest, and thus from their significance. It would also detract from the character and appearance of the street scene in an ASC.

⁸ For convenience I refer to Brus Lodge as no. 28 throughout this decision

⁹ Albeit the historic maps in the appellant's documentation suggest no. 28 may have been extended eastwards at a later period

¹⁰ The adopted 'Areas of Special Character – Description Review' Supplementary Planning Document (SPD8) (2005); the adopted 'Buildings or Structures of Character SPD (2005) (SPD9); the Craigweil House Conservation Area Statement (undated); the Aldwick Parish Design Statement (2015)

¹¹ Albeit, contrary to a statement in the appellant's final comments, private residential gardens in built-up areas such as this are *not* included in the definition of previously developed land in the *Framework*

21. The dwelling in this scheme, on a larger plot than in the previous scheme, might in part be a response to the finding of the Inspector in 2013 that the modest plot and dwelling in that scheme would not express the 'character of grandeur' attributed to Kingsway properties in SPD8 and the CA Character Statement. However it appears the pendulum has swung too far the other way, with a scheme for an overly dominant building that would not sit comfortably between its 1930s neighbours in terms of its size, proportions or detailed design. That being the case, I find the appeal scheme would harm the character of its surroundings, thereby failing to preserve the CA's character and appearance and detracting from its significance as a designated heritage asset.
22. In terms of policy guidance in the *Framework* the harm to the significance of the designated heritage asset (the CA) would be less than substantial but there would be harm nonetheless. Harm to the setting of non-designated heritage assets and to the ASC also weighs against the proposal. On the other hand the addition of just one dwelling to the District's housing supply carries only limited weight as a public benefit. I find it insufficient to outweigh the harm the proposal would cause to the character, appearance and significance of the CA, the setting of the adjacent locally listed buildings and the conflicts with development plan and *Framework* policies.

Sites of international importance for nature conservation

23. The appeal site is within 5km of Pagham Harbour which is designated as a Special Protection Area, Site of Special Scientific Interest and Ramsar site¹², primarily because of its international importance as habitat for rare birds. The SPA is protected by virtue of European Birds and Habitats Directives. Moreover the Habitats Regulations¹³ are such that I must consider whether this appeal scheme, on its own or in combination with other projects, is likely to have a significant effect on the integrity of the SPA and its features of interest¹⁴.
24. From the Council's appeal representations it is apparent that the site and birds are vulnerable to disturbance by people and dogs and that new housing within 5km of the SPA is likely to increase the recreational pressures on it. One new dwelling in isolation is unlikely to add appreciably to such pressures but the cumulative effect from all new housing within the 5km zone could do so. The information before me includes an indication of the likely additional housing numbers. Although these have still to be subjected to scrutiny through examination of the eLP, they suggest a substantial increase is more likely than not. The likelihood of a significant number of new houses (possibly several hundred) having cumulative effects in terms of increased recreational pressures on the SPA is a matter which I must take into account.
25. I must do so even though the background to this matter is not fully explained in the Council officers' report at the application stage. That report does however refer to draft Policy ENV DM2 of the eLP, a report to the Council's Cabinet and saved LP Policy AREA13 which, taken together, provide the background including the need to secure mitigation measures in order to protect the SPA's integrity and features of interest. The Cabinet report includes a methodology for a contribution per dwelling and reference to specific proposals for access management measures¹⁵ such as provisions for wardening, dog projects, interpretation/signage and monitoring.

¹² For convenience I refer to it subsequently as 'the SPA'

¹³ In full, the Conservation of Habitats and Species Regulations 2010

¹⁴ Notwithstanding the Council's 2013 Habitats Regulations Assessment in relation to the eLP

¹⁵ Referred to as Strategic Access Management and Monitoring (SAMMs)

26. Whilst the Cabinet report has not been subject to public consultation it is apparent from the information submitted by the Council that key bodies such as Natural England and the Royal Society for the Protection of Birds have been involved in developing the Council's approach. Moreover it is an approach which, in my experience, is similar to those found to be acceptable and being applied elsewhere in other areas in relation to SPAs¹⁶.
27. In particular, as explained in the Council's representations, the SAMM contribution would not be used for infrastructure provision and thus the pooling restrictions in the *Community Infrastructure Levy (CIL) Regulations 2010* (as amended) do not apply. Moreover in circumstances such as these, advice in the national *Planning Practice Guidance* (PPG) allows for such a contribution, even though it is tariff-based, to be secured by a planning obligation¹⁷. Thus requiring provision for mitigation measures by means of a planning obligation would not conflict with the CIL Regulations, tests in the *Framework* or the PPG.
28. The appellant does not wish to make provision for this contribution but, without it, I am unable to conclude with certainty that this scheme in combination with other plans and projects would not be likely to have a significant effect on the integrity of the Pagham Harbour SPA. Similarly I am unable to conclude the appeal scheme would accord with *Framework* policies relating to sites protected under the Birds and Habitats Directives, or with eLP Policy ENV DM2 insofar as this draft policy is consistent with the *Framework*.

Other matters and overall conclusions

29. I have had regard to all other matters raised, including representations at application and appeal stages from the CHECAA¹⁸, Aldwick Parish Council and local residents concerning a range of other matters such as impacts on trees, neighbouring occupiers' living conditions, vehicular access, parking, highway safety and drainage matters for example. A new pedestrian access across land outside the appellant's ownership is a private matter. Various points made about the Council's handling of the application and about the appellant's agent have no bearing on the planning merits of the appeal scheme.
30. In short I have found nothing sufficient to alter or outweigh my findings on the two main issues. These lead me to conclude the proposals would not accord with specific policies in the *Framework* which indicate development should be restricted. It is not therefore necessary to assess whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Notwithstanding any minor social and economic benefits resulting from creating one new dwelling, the proposals would not constitute sustainable development. Rather they would conflict with the development plan and with the *Framework* and I therefore conclude, overall, that the development as proposed would be unacceptable and thus that the appeal must fail.

Jane Miles

INSPECTOR

¹⁶ The Elmbridge example cited by the Council will relate to the Thames Basin Heaths SPA and there is a similar strategy in place for the Dorset Heathlands SPA for example

¹⁷ PPG reference ID: 23b-020-20160519

¹⁸ The Craigweil House and its Environs Conservation Area Association