



Appeal Decision

Site visit made on 15 February 2011

by Elizabeth Hill BSc(Hons), BPhil, MRTPI

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

Decision date: 31 March 2011

Appeal Ref: APP/C3810/A/10/2140105

Green Oaks, Barnham Road, Barnham, Bognor Regis, PO22 0EB

- 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 Southcott Homes Limited against the decision of Arun District Council.
 - The application Ref EG/4/10, dated 20 January 2010, was refused by notice dated 6 May 2010.
 - The development proposed is the redevelopment of land to provide for the erection of 13 new dwellings to include 4x2 bedroom semi-detached houses, 4x3 bedroom semi-detached houses 4x4 bedroom detached houses and 1x5 bedroom detached house together with associated access, car parking and landscaping.
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Decision

1. I allow the appeal, and grant planning permission for the redevelopment of land to provide for the erection of 13 new dwellings to include 4x2 bedroom semi-detached houses, 4x3 bedroom semi-detached houses 4x4 bedroom detached houses and 1x5 bedroom detached house together with associated access, car parking and landscaping at Green Oaks, Barnham Road, Barnham, Bognor Regis, PO22 0EB in accordance with the terms of the application, Ref EG/4/10, dated 20 January 2010, subject to the conditions in the attached schedule.

Procedural matters

2. The decision notice makes reference to the South East Plan, which the Secretary of State has said will be abolished by the Localism Act. However, similar matters are covered by the saved policies of the Arun District Local Plan 2003 (LP) and national planning policy and the appeal has been determined on this basis.
3. Since the determination of the application which is the subject of this appeal the appellants have submitted a further planning application to the Council Ref. EG/63/10. Although this was also refused by the Council, the reasons for refusal do not relate to drainage issues, which the appellants say have been overcome. There were no objections to this proposal from the Environment Agency (EA) and the Council's drainage engineer. Nevertheless, the Council has not withdrawn the reasons for refusal relating to drainage for this appeal and it is necessary that these matters are considered as part of it.
4. Revised proposals for foul and surface water drainage, which the appellants say were those put forward in respect of the second application, have been submitted as part of the appeal evidence. However, the alternative foul water

proposal of a bio bubble treatment plant has been withdrawn since agreement has been reached with Southern Water that connection can be made to the foul sewer. Similarly, a minor amendment to the landscaping proposals has been put forward to overcome the objections of the landscape officer to the proximity of the replacement trees to the new dwellings. The Council has objected to the consideration of both of these submissions as part of this appeal, since their view is that they relate to another application.

5. The Planning Inspectorate's Good Practice Advice Notes 9 and 10 relate to the introduction of new evidence and the acceptance of amendments at appeal. Generally, the view is that it is important that what is considered at appeal should be the same as that considered by the Council in determining the planning application. In this case the appellants resubmitted an identical application with a revised Flood Risk Assessment (FRA), which incorporated the results of further soakage tests and a revised specification for the soakaways. This is not entirely new evidence but a limited amount of additional information to the already existing FRA. Such matters might normally be the subject of planning conditions and Circular 11/95: The Use of Conditions in Planning Permissions says that planning permission should not be unreasonably withheld where matters could be dealt with by suitably-worded conditions.
6. Whilst recognising that the issue of flooding is of great public interest locally with most of the objections referring to it, the objectors will be likely to have been aware of the further information submitted with the appeal. Similarly, although the EA's letter of 11 October 2010 saying that there is no longer any objection to the scheme on flooding grounds refers to the information supplied with the second application, this was also submitted in the revised FRA for this appeal. Whilst the Council is technically correct in saying that the information was part of the subsequent application, it would be unreasonable not to take account of limited additional information already in the public domain in the determination of this appeal, when no-one would be prejudiced by its consideration.
7. The appellants have also submitted a slightly amended scheme which takes into account the objection of the landscape officer to the proximity of the proposed replacement trees to the proposed housing. The appellants say that the scheme would not be necessary if the tree species were different with different sizes/shapes of crown. Since this type of matter might be resolved through the imposition of suitably-worded conditions, the scheme has been assessed on the original layout.

Main Issues

8. The main issues in this case are:
 - a) the effect of the proposed development on the character and appearance of the area;
 - b) the flood risk to the development; and,
 - c) whether adequate foul drainage can be provided for the proposed development.

Reasons

Character and appearance

9. The proposed development would take place in an area which is currently used as rear garden to Green Oaks, separated from agricultural/equestrian uses by a double evergreen tree screen along one side and part of the rear of the site. The Council say that the site does not form part of the Local Gap between Eastergate and Barnham, and is within the settlement boundary as defined in the LP, but is immediately adjacent to the Local Gap and currently open. Policy GEN2 of the LP supports development within settlement boundaries where it complies with the other policies of the LP. It is also outside the Area of Special Character which includes part of Downview Road. The area to the north, from which access would be obtained, has recently been developed for 11 dwellings, following an appeal Ref. APP/C3810/A/07/2059083.
10. Some objectors have made reference to a cartographical error on the LP Proposals Map which should have shown the site within the Local Gap. This matter was explored in the previously-referenced appeal. The Inspector's view in that appeal was that the Council had known about the error since 2003 and had not brought forward an amendment to correct it. Case law and the evidence was not sufficient to justify a departure from the development plan. There is no reason to come to any other conclusion as a result of the material submitted with this appeal.
11. The site also forms part of the long garden to Green Oaks. Changes to Planning Policy Guidance Note 3: Housing Annex B mean that private residential gardens are no longer classified as previously-developed land, giving it lower priority for development. In this case the garden at Green Oaks is exceptionally long and its development would still leave a garden of a similar size to the adjacent property, Wentbridge. The appeal site falls within an existing settlement in a sustainable location, where new development is acceptable in principle. The change to PPS3 amended the approach to be taken in respect of development on residential garden land but it does not state that such development is necessarily unacceptable. The effect is to place greater emphasis on local policies, taking into account the development plan and all other material considerations.
12. Although local residents and the Parish Council have said that the new housing would not be in keeping with the Area of Special Character, the site lies outside that area and would have no significant impact on it. The Council has no objection to the design of the housing, which would be similar to that approved on the adjacent plot. The density would be higher than other housing off Downview Road but not so high that it would be out of keeping with the existing character of the area.
13. The proposal would include the removal of a double line of tall non-native conifers, the main value of which is to screen the Local Gap and the motor works within it. These are recorded as being in poor condition in the tree survey and would be replaced by native species planted along the boundary, which would be likely to take some time to grow fully. In the long term the changes to the landscape in the form of the new native trees would be positive. However, in the meantime, the new housing would be exposed as an obvious addition to the built-up area, seen in views from a public footpath within the Local Gap. Similar new additions can be seen from the footpath at present. Although there would be changes in the views from the footpath as a result of

the proposal generally these would be seen as rounding off the existing development.

14. The proposed replacement trees would be closer than 10m from the proposed houses on two of the plots and there would be little screening on one plot. The appellants' suggested changes to tree species with a narrower crown would help to overcome these objections. The tree planting and landscaping schemes would be the subject of suitably-worded planning conditions, including the planting positions, species, heights and other specifications, which could address these matters. As such, there would be no reason to withhold planning permission on this basis.
15. Therefore the proposed development would not be harmful to the character and appearance of the area and would be in accordance with policy GEN7 of the LP which says that development should respond positively to the character of the area and retain woodland that makes a material contribution to the local environment.

Surface water

16. In terms of fluvial flooding, the site lies in Flood Zone 1 on the EA's Flood Risk maps, with flooding shown along the watercourse to the rear of Elm Grove, extending northwards. The Council's Strategic Flood Risk Assessment for Arun District map for the area shows the area as having been subject to surface water flooding historically. Local residents report problems with drainage, waterlogging and flooding from Barnham Rife, which were acute in 2000 and persist during heavy rainfall despite improvements to the Rife. It is important for any development proposals not to add to the downstream and localised flooding problems.
17. The appellants' preferred drainage solution would dispose of surface water on site using source control methods, with soakaways for the surface water from the housing and permeable paving for the roadway, as set out in the Flood Risk Assessment (FRA) and associated plans. Sustainable Urban Drainage Methods (SUDS) like these are promoted by Planning Policy Statement 25: Development and Flood Risk (PPS25) and its associated Practice Guide. The site is flat but groundwater levels fluctuate with the season and can be high in winter in this area. The damp conditions on site are shown by the ground flora present. Recent development on the adjacent site has used balancing ponds with discharge to a ditch/Barnham Rife rather than infiltration. On the site visit the area next to Barnham Rife on the opposite side of Downview Road was seen to be waterlogged but this is a little way from the site and it is necessary to test the permeability of the site itself to confirm its suitability.
18. Originally, the EA lodged an objection to the original FRA, dated 2 March 2010, on the grounds that it was inadequate. The EA identified the need for groundwater level monitoring to be submitted in order to be assured that soakaways would be able to operate effectively all year round, including a freeboard. An amended FRA including the groundwater monitoring was submitted to the Council but this was after the application had been determined. As such, the EA's objection to this particular application stands.
19. However, the appellants say that these matters have now been resolved with the EA in respect of the subsequent application for the development of the site, which was identical but provided further information on matters such as surface water disposal. The letter dated 11 October 2010 from the EA states that they

have no objection to the subsequent scheme in terms of flood risk or surface water disposal and have no wish to apply their Barnham Position Statement in this case. The Council's drainage engineer similarly no longer has any objections to the scheme. Despite the concerns of local residents, the infiltration tests and the other additional technical information supplied with the revised FRA confirms that infiltration drainage could be achieved on the site. The preferred method of surface water drainage would deal with surface water at source and would not result in the existing flooding problems being made worse by the proposed development.

20. Therefore the proposal would not be harmful in terms of flood risk and would comply with the provisions of PPS25 and policies GEN9 and GEN11 of the LP.

Foul drainage

21. Southern Water has said that they are able to provide capacity in their sewer to serve the development, although local people mention problems with the existing system. The Council's drainage engineer says that the problems are likely to be caused by groundwater infiltration, which is capable of technical resolution. There have also been reported sewer blockages on the junction of Downview Road and Elm Grove. Although no cause has been given, such problems often relate to the design of the system, exacerbated by high flows.
22. The appellants' alternative solution for foul water disposal, which is a private treatment plant draining to a soakaway, would be less sustainable. It would also increase the volume to be handled by infiltration methods on the site. DETR Circular 3/99: Planning Requirement in respect of the Use of Non-Mains Sewerage incorporating Septic Tanks in New Development says that the first consideration should be the provision of mains drainage for development, in consultation with the sewerage undertaker. Only where this cannot be provided should a private system be considered, since there can be management and maintenance problems which ultimately can result in pollution.
23. The EA has no objections to the use of the existing foul sewer to provide drainage to the site, although there have been reported pollution problems of Barnham Rife by sewage. Sewer flooding also damaged the local school in 2009 and there are reports of manholes surcharging and tankers being used to pump during high flows. Southern Water has not indicated any problems with the capacity of the sewer or associated infrastructure such as pumping stations. A letter dated 11 October 2010 in respect of the subsequent application re-iterates the EA's support for connection to the foul sewer, rather than have a private treatment plant and there is no longer any objection from the Council's drainage engineer. Foul sewer connection is preferable to a private treatment plant. Since there is no adverse technical evidence on sewer capacity in the area and those responsible for sewage disposal have no objections on the grounds of capacity, then connection to the sewer would be the most sustainable method of foul drainage.
24. Therefore adequate foul drainage could be provided for the proposed development and the development would be in accordance with LP policies GEN9, GEN23, GEN25 and GEN26 and Planning Policy Statement 23: Planning and Pollution Control, which cover the provision of infrastructure and the prevention of pollution.

Other matters

25. The appellants have submitted a unilateral undertaking which covers payments towards infrastructure, which residents report is overloaded. The Council has confirmed that it meets their requirements in terms of contributions to library, education and fire services and to play equipment on the site. Having regard to the tests in the Regulation 122 of the Community Infrastructure Levy Regulations 2010, the payments would meet the tests in that they would be necessary, directly related to the development and fairly and reasonably related in its scale and kind.
26. The traffic generated by the development would link to Downview Road via the recent development at Chantry Mead. Local residents say that this is a private road but any connection to it and its use and maintenance would be a private legal matter rather than a planning matter. Local residents have suggested that the access should be direct from Barnham Road, which is classified, but having two accesses close together would be likely to have adverse implications for highway safety and as such are often resisted by highway authorities. The junction of the access to Downview Road would have a minimum visibility distance of 2.4m by 33m which would be sufficient in a traffic-calmed location such as this. There would be more traffic on Downview Road which is about 4.8m wide with no footways or street lighting. However, the low speeds which are likely to continue to be associated with traffic in the area help in maintaining highway safety, both at this junction and the one at Elm Grove.
27. A number of local residents are concerned that the removal of the tree screen on the boundary of the site with the Local Gap would give rise to further noise, smell and adverse views of the motor works beyond from the rear of the houses on the side of Downview Road nearest the development. The trees are unlikely to prevent noise and smells in any event but the development and the new planting on the site would re-establish a screen between these houses and the works. The proposed development would be sufficiently distant to prevent any adverse impact on daylight, privacy, noise and disturbance for existing occupiers.
28. An ecological survey was carried out in October 2009 when bats and other species were likely to have started to become dormant. A further survey was carried out in September 2010, which showed that there were no bat roosts on the site, although it is used as a foraging area, and also that the likelihood of the presence of other protected species on the site is low, with the exception of foxes. One den on the site would be affected by the construction of the road and would require closure under supervision prior to any works for the access road.
29. The Council has suggested that the conifer screen should be reduced gradually and replaced with native species on the western boundary of the site in order to retain a commuting corridor for foraging bats. The appellants' survey and report has not specifically mentioned these trees as being important for bats, only those on the eastern boundary, at paragraph 5.3.4 of the report. The Council say that the gradual replacement of the trees has been the subject of discussions with the developer. A minor change to one of the Council's suggested conditions could cover the timetable for the replacement of these trees.

Conditions

30. The Council's suggested conditions have been considered in the light of the advice in Circular 11/95: The Use of Conditions in Planning Permissions. In order to protect the character and appearance of the area, conditions requiring a scheme for the landscaping for the site and its hard and soft surfacing, together with a tree protection scheme for the trees and hedges to be retained, need to be imposed. In order to protect the character and appearance of the area and ensure mitigation for protected species a scheme for the replacement of trees on the western boundary and a programme for its implementation would be required. The inclusion of a programme to be submitted would allow for the development of the scheme to maximise the opportunities for wildlife enhancement and mitigation. In order to prevent harm to highway safety a condition would be required to ensure that the access, parking, including garages, and turning space were provided before the occupation of the dwellings and retained.
31. Conditions would be required for the details of foul and surface water drainage, to include sustainable urban drainage techniques (SUDs), to prevent flooding and water pollution. A condition to ensure that a scheme for the archaeological investigation of the site was carried out would be necessary to ensure the protection of any heritage assets. Finally, to ensure that the character and appearance of the area would be protected, conditions requiring the details of the boundary treatment and materials would be necessary. Minor changes have been made to the conditions in the interests of precision and clarity.

Conclusions

32. Therefore, for the reasons given above and having regard to all other matters raised, the appeal should be allowed.



INSPECTOR

Schedule of conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this permission.
2. No development shall commence until a landscaping scheme has been submitted to, and approved in writing by, the Local Planning Authority. The approved details of the landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
3. The development hereby permitted shall not be occupied until a scheme for trees and shrubs to be planted along the western boundary, with a programme for its implementation, have been submitted to and approved in writing by the Local Planning Authority. The planting shall be carried out as approved. In the event that any such trees or shrubs die or become seriously damaged or diseased within a period of 5 years following planting they shall be replaced in the next planting season with others of similar size and species.
4. No development shall take place until a scheme of hard and soft surfacing has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include details of all proposed and existing trees and hedgerows on the land, including those to be retained, together with measures for their protection in the course of development and for the proposed Hornbeam Hedge on the south west boundary, measures for its protection and maintenance thereafter. The approved details shall be implemented prior to the occupation of any dwelling.
5. The dwellings hereby approved shall not be occupied until the access road, parking spaces, turning facilities and garages shown on the approved plans have been provided and constructed. The areas of land and facilities so provided shall not thereafter be used for any other purpose.
6. No development shall commence until details of the foul water drainage system have been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the foul drainage works have been carried out in accordance with the approved details.
7. No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles, and including an assessment of the hydrological and hydro geological context of the development has been submitted to and approved in writing by the Local Planning Authority. Proposals shall include a "Surface water Management Statement, or a SUDS Design Statement" detailing the management train processes. The submission shall also include details of how the scheme will be maintained and managed after completion. The drainage scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
8. No development shall commence until the developer provides a management and maintenance plan in the form of a site specific Maintenance Manual for the SUDS system for the lifetime of the development, for the written approval of the local planning authority. This Manual shall include details of the financial

management of the scheme and for the replacement of all infiltration devices, soakaways and permeable pavements. The Manual shall outline the methods by which the permeable pavements will be cleaned to ensure optimum performance and how the 'NO DIG ZONE' will be managed to ensure that this area is not disturbed in future. All the elements of the scheme shall be maintained in accordance with the agreed Manual.

9. No development shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the Local Planning Authority.
10. No development shall commence until details of screen walls and/or fences have been submitted to and approved in writing by the Local Planning Authority and no dwellings/buildings shall be occupied until such approved screen walls and/or fences associated with them have been erected.
11. No development shall commence until a schedule of materials and finishes and samples of such materials and finishes to be used for external walls and roofs of the proposed buildings have been submitted to and approved in writing by the Local Planning Authority and the materials so approved shall be used in the construction of the buildings.

End of the schedule of conditions.

