



Appeal Decision

Site visit made on 1 August 2022

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th August 2022

Appeal Ref: APP/C3810/W/22/3291254

Land at West Walberton Lane, Walberton, Arundel BN18 0QF

- 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 Mr Matt Allsopp of Macra Ltd against the decision of Arun District Council.
 - The application Ref WA/32/21/PL, dated 12 April 2021, was refused by notice dated 26 July 2021.
 - The development proposed is the construction of 30 dwellings together with associated access, parking, public open space and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following submission of the appeal, the appellant has provided further information and made amendments to the landscape layout in relation to drainage and flood risk. The Council including its Drainage Engineer, the Environment Agency and West Sussex County Council as Lead Local Flood Authority, have had the opportunity to consider this information and respond accordingly. Having regard to the judgement in *Wheatcroft*¹, I am satisfied that those with an interest in the appeal would not be prejudiced by this additional information or amendment and I have taken it into account in my decision.
3. An appeal was recently allowed on land west of Tye Lane, Walberton for the construction of up to 155 dwellings². The main parties have been given the opportunity to comment on the decision and I have taken their views into account in determining this appeal.

Main Issues

4. The main issues are the effect of the development on:
 - The spatial strategy for the location of new development
 - The character and appearance of the landscape
 - The Walberton Green Conservation Area
 - Flood risk
 - The provision of affordable housing and infrastructure.

¹ Bernard Wheatcroft Ltd v SSE [1982] 43 P&CR 233

² APP/C3810/W/21/3278130, dated 25 July 2022

5. It is also necessary to consider what effect the lack of housing land supply in the district should have on the decision, and the benefits of the scheme. I address these issues in my conclusion.

Reasons

Location of development

6. The spatial strategy of the Arun Local Plan 2011-2031 (adopted July 2018) (the 'Local Plan') is to focus new development within built-up areas or on allocated sites as defined on the Arun Local Plan Policies Maps. The site lies in part adjacent to but outside the built-up area boundary of Walberton. Policy C SP1 of Local Plan defines land outside the built-up area boundary as countryside recognised for its intrinsic character and beauty. Within the countryside development is only allowed if it falls within a limited number of categories, none of which apply to the appeal scheme. Policy HP1 of the Walberton Neighbourhood Development Plan 2019-2031 (the 'Neighbourhood Plan') supports and reiterates this approach.
7. The weight to be given to the policies that underpin the spatial strategy, in particular those relating to residential development, depends on other factors such as whether they have become out-of-date. I address this weighting in my overall conclusion. However, in so far as the policies are relevant, I conclude that the location of the development would run counter to the spatial strategy as set out in the development plan, and the proposal therefore conflicts with Policy C SP1 of the Local Plan and Policy HP1 of the Neighbourhood Plan.

Character and appearance

8. The site is currently rough grazing land, surrounded by mature field hedges and occasional trees. In the south-eastern corner, two residential properties and their gardens back onto the site, separated by low timber fences. The site is bounded to the north and south by rural lanes on the opposite sides of which are a scatter of dwellings in mature gardens. To the west lies further grazing land, and to the east is Walberton Green.
9. Development of a housing estate on the site would erode its current open and undeveloped character. The new houses would be visible in glimpsed views from the surrounding lanes, the green, and agricultural land to the west. It would be openly visible in views along the proposed access road from Eastergate Lane. The bungalow on Plot 1 would in particular be prominent, because of its siting close to the lane and small garden limiting the scope for screen planting. This would remain the case even when new boundary planting along the lane matured. The proportion of built form and associated road and parking areas would be noticeably greater when compared to the lower density houses set in much larger mature gardens along Eastergate Lane and West Walberton Lane.
10. However, I disagree with the Council's statement in the second reason for refusal that the site is visually separate from the village with far ranging views across open countryside. Although outside the built up core of the village, it is nevertheless flanked to the north and south by loosely knit houses, and to the east by the village green, which itself is surrounded by houses. The substantial field hedge and trees along the western boundary also limit views from the countryside to the west. Together, these features provide a degree of

containment to the site, such that the proposed development would be seen as an extension of built development against existing housing on the edge of the village, rather than an intrusion into open countryside.

11. The houses would be traditional in form and appearance, and the proposed external materials are consistent with those found in the local area, with sufficient variety in design to avoid a monotonous or overly regular scheme. Keeping the boundary hedges as part of the communally managed open space rather than as part of individual plots would aid their future retention and maintenance as important landscape features helping to screen the site. Buildings would also largely be set away from the site boundaries, further helping to limit their visual presence in views from outside the site.
12. The landscape appraisals³ submitted with the proposal are largely consistent with my assessment above, the latter of which concludes that the development would have a minor adverse effect overall on the landscape.
13. While the proposal would harm the rural, undeveloped character and appearance of the site, the harm to the character and appearance of the wider landscape would be more limited because of the degree of containment and the design of the scheme retaining as it would the most important landscape features that help to screen it from external view. I conclude that the proposal would to a limited extent conflict with Policies D SP1 and D DM1 of the Local Plan and Policy VE13 of the Neighbourhood Plan, which seek to protect the landscape and views of it.

Conservation area

14. The Walberton Green Conservation Area covers the public open space around the point where five roads converge, and the buildings and gardens that front that space. Somewhat unusually the green does not lie at the centre of the village but rather at its western end. It has historically been used for informal recreation and village events. It includes a large pond on the southern side of Eastergate Lane. Buildings around the green are mostly detached and semi-detached houses of 19th or 20th century date. Listed buildings included within the conservation area are a range of early 19th century brick cottages on the eastern side of the conservation area (15-20 The Street) and Friars Oak and Little Box Cottage, a pair of 18th century thatched cottages to the south.
15. Although the conservation area is situated on the western side of Walberton and is described as semi-rural by some representors, given the incremental development that has taken place around it during the 19th and 20th centuries, its relationship with the countryside is now less pronounced, including with the appeal site where views of it are stopped by the intervening trees and hedgerow. In my view the significance of the conservation area derives mainly from it being an open communal area, surrounded by low density domestic housing set in mature gardens with a preponderance of trees and other greenery.
16. A small part of the eastern end of the appeal site lies within the conservation area, although this area is not proposed to accommodate any built development other than in part a pond, and the existing trees and hedgerow along the boundary with the green would be retained. The absence of any

³ Pegasus Group, Landscape Appraisal dated 26 March 2021 and Landscape Appeal Statement dated 20 January 2022

significant change would preserve the character of this part of the conservation area.

17. Glimpsed views of parts of the development within the setting of the conservation area would be seen from the green, including a terrace of 3, 2-storey houses set back beyond the eastern pond. Other glimpsed views of buildings would be seen as one left or approached the conservation area along Eastergate Lane and West Walberton Lane.
18. The terrace of houses would be of simple brick and tile with a hipped roof and regularly spaced chimneys. It would not be dissimilar in form and appearance to existing houses on the western side of the green, or as suggested in the appellant's heritage statement⁴, the terrace of listed buildings at 15-20 The Street. Although the terrace of houses on the appeal site would be partly seen from the conservation area behind the trees and hedgerow, that would be no different to the other buildings that surround the green. It would be consistent with the significant features of the conservation area.
19. Other aspects of the scheme would include glimpsed views of buildings backing onto West Walberton Lane and Eastergate Lane, and the bungalow on Plot 1. The introduction of such buildings would weaken the setting to the west of the green to an extent by suburbanising it but as they would be further away and less visible from the green, their effect would be limited. As noted in my appraisal of landscape character, the existing boundary hedgerows and field trees would be retained and communally managed, so as to maintain their current appearance. I consider this would also help maintain views into and out of the western side of the green, and limit the perceived change in so far as the setting of the conservation area is concerned.
20. Having regard to these factors, I conclude that the development would cause some limited harm to the setting of the Walberton Green Conservation Area through suburbanising its low density character, but that harm would be less than significant. It would therefore conflict to a limited extent with Policies HER SP1 and HER DM3 of the Local Plan and Policies VE4 and VE13 of the Neighbourhood Plan, which seek to conserve and enhance heritage assets such as conservation areas. For the same reason it would not preserve or enhance the character and appearance of the Walberton Green Conservation Area, as required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Having regard to paragraphs 199 and 202 of the Framework, this harm attracts great weight, and it is necessary to weigh it against the public benefits of the proposal. I do this in the planning balance.

Flood risk

21. Part of the site lies within Flood Zones 2 and 3 as shown on the Environment Agency's Flood Map for Planning. To avoid flooding of the development, land forming part of the internal roadway and parts of plots 2-8 would have to be raised in height. Compensatory flood storage capacity would be provided by excavating an equivalent volume in the western and south-western parts of the site as a remodelling of the existing floodplain area. A separate drainage system would be provided to attenuate surface water runoff from the development. This would consist of a voided subbase under the internal roadway, crated storage under parts of the turning and parking areas and a

⁴ Pegasus Group, Statement on Heritage, January 2022

- new pond at the eastern end of the site. A restricted outfall would be directed to the ditch along Eastergate Lane.
22. While acknowledging that the volume of required flood storage compensation could be delivered through the method proposed in the Flood Risk Assessment⁵, I share some of the concerns expressed by the Environment Agency and the Council's Drainage Engineer, who maintain their objections to the proposal⁶. The proposed solution would require significant alterations to land levels in the south-western part of the site. Due to high ground water levels across parts of the site, including the area liable to flood, the floodplain area would also have to be lined with clay, as might the drainage system, to prevent groundwater ingress⁷. This would further complicate the engineering solution, and also increase the burden on future monitoring and maintenance requirements. These difficulties are inherent in protecting residential development on a site which is, at least in part, at risk of flooding.
23. Local Plan Policy W DM2 requires that development in areas at risk from flooding will only be permitted where, amongst other criteria, the sequential test in the National Planning Policy Framework (the 'Framework') has been met. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Paragraph 162 of the Framework states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
24. Within and adjoining Walberton residential development has and is taking place, including a large development at Dowling Way and a smaller one off West Walberton Lane. Other small housing sites are contained in the Neighbourhood Plan and permission has recently been granted on appeal for a residential development of up to 155 dwellings on land west of Tye Lane. The acknowledged shortfall in housing land supply in the wider district is an issue I address later in my decision, but for the purposes of flood risk assessment it is apparent that there are other sites in and around Walberton that are able to provide housing, and which on the evidence available to me are at a lower risk of flooding.
25. I conclude that the development fails the sequential test as set out in the Framework because there are other sites which are reasonably available and are at a lower risk of flooding. The development therefore conflicts with Policy W DM2 of the Local Plan. I reach this view notwithstanding the engineering solution put forward by the appellant to safeguard the proposed development from flooding for its lifetime, without increasing flood risk elsewhere. Where there are alternative sites which do not need such engineered solutions, they are preferable in terms of minimising flood risk and simplifying surface water attenuation.

⁵ The Civil Engineering Practice, Flood Risk Assessment, December 2021 and subsequent correspondence.

⁶ Summaries of the respective positions on flood risk and drainage are set out in statements dated 22 June 2022 (Environment Agency), undated (ADC Drainage Engineer) and 6 July 2022 (The Civil Engineering Practice).

⁷ The Civil Engineering Practice, Drainage Appeal Rebuttal Statement, response to ADC Drainage Engineer's comments, section 7.

Affordable housing and infrastructure

26. The appellant has submitted a draft legal undertaking that would secure a proportion of the units as affordable dwellings, a financial contribution towards highway improvements on the A27, and a monitoring fee. Email correspondence between the Council and appellant indicate that these obligations once secured would satisfactorily address the two matters referred to in the fifth reason for refusal, relating to the provision of affordable housing and infrastructure.
27. Planning obligations should only be sought where they are necessary, directly related to the development and reasonably related in scale and kind to the developments⁸. Having regard to the requirements of Policies AH SP2 and INF SP1 of the Local Plan and the consultation responses on affordable housing and highway matters, I am satisfied that there is a need for these provisions to help meet affordable housing need and to mitigate additional pressures on the A27 and I have placed weight on them in coming to my decision.

Conclusion

Housing land supply

28. The Council is unable to demonstrate a 5-year supply of housing land as required by national policy. The position has worsened since the application was refused when the Council could demonstrate a 3.3-year supply, to the current position where it can only show a 2.4-year supply⁹. The appellant's assessment of current housing land supply is lower yet at 2.04 years. The number of dwellings delivered over the last 3 years at only 65% of the target number is substantially below the housing delivery requirement set out in the Framework¹⁰.
29. In such circumstances, for applications involving the provision of housing, the policies most important for determining the development plan are considered to be out-of-date, and paragraph 11 of the Framework says that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusal, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
30. Paragraph 14 of the Framework says that in situations where the presumption in paragraph 11 applies to applications for housing, a conflict with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided 4 criteria are met. In this case, because the housing land supply has fallen below 3 years at least one of those criteria is not met and this provision does not apply. This is irrespective of the fact that the latest version of the Walberton Neighbourhood Plan is only a little over one year old.
31. However, as noted in footnote 7 of the Framework, one of the policies that protects areas or assets of particular importance is that relating to areas at risk of flooding. As I have concluded that the development would fail the sequential test in the Framework, this provides a clear reason for refusal. The

⁸ Regulation 122 of the Community Infrastructure Levy Regulations 2010

⁹ ADC Authority Monitoring Report 202-2021, published January 2022

¹⁰ Housing Delivery Test: 2021 measurement

presumption in favour of sustainable development (sometimes called the 'tilted balance') is not therefore triggered in this case.

Planning balance

32. I have found that the proposal would cause harm and conflict with policies relating to the location of development, the character and appearance of the landscape, and flood risk. Of these I give moderate weight to the conflict with the spatial strategy for the location of development, because of the lack of housing land supply in the district. I also give limited weight to the harm to the character and appearance of the landscape for the reasons set out earlier. I give full weight to the failure to meet the sequential test on flood risk. I also give great weight to the harm that would be caused to the setting of the Walberton Green Conservation Area, noting that this harm is limited in its extent. The obligations contained in the legal undertaking address requirements for affordable housing and infrastructure. I consider that the proposal conflicts with the development plan when taken as a whole.
33. Set against the conflict with the development plan are the public benefits of the scheme. The greatest benefit would be the provision of 30 additional residential units. Given the serious shortfall in housing land supply this provision carries significant weight. The difference between the main parties on the housing land supply shortfall is small, and the difference between 2.04 and 2.42 years' supply does not significantly alter the weight I give to this benefit or materially affect the planning balance that I have reached. The provision of affordable housing would also be of significant benefit given the need for subsidised housing in the district.
34. The appellant lists other benefits in paragraph 10.5 of the statement of case. There would be limited economic benefits arising from increased local spending, construction jobs during the implementation phase, and the role of housebuilding in supporting economic recovery. I give neutral weight to increased Council tax receipts and Community Infrastructure Levy contributions as these would be necessary to defray additional costs to public services and infrastructure arising from occupants of the development.
35. I give limited beneficial weight to the provision of open space on the site, as while some of this is of communal advantage, such as the community orchard, other parts are a necessary requirement of the development to provide flood compensation or drainage features and retention of the boundary hedges and trees to maintain character and setting. I give limited weight to increased use of local social facilities as I have no evidence to show that would be necessary to ensure their continued provision, although I acknowledge that additional occupants could help maintain or enhance the vitality of the community.
36. The environmental benefits of the scheme in terms of high quality design, landscaping, biodiversity gain and sustainable design are of limited or neutral weight as most of these are requirements of planning policies or other legislation to meet necessary living and environmental standards. The Council has not raised minerals safeguarding or loss of agricultural land as issues in this case, and I have therefore not taken them into account in reaching my decision. I treat them as neutral in the planning balance.
37. The appeal on land west of Tye Lane was recently allowed in part because of the lack of housing land supply and the consequent significant benefits arising

from additional housing, including affordable housing, that I have identified in this appeal. However, other circumstances in this case differ in that they include flood risk considerations, and the 'tilted balance' in paragraph 11 of the Framework is not triggered.

38. Weighing these matters together, I consider that the benefits of the development, significant though some of them are in the context of a serious lack of housing land supply, do not outweigh the conflict with the development plan that has been identified, including the clear reason for refusal on flood risk grounds.

39. Accordingly, I conclude that the appeal should be dismissed.

Guy Davies

INSPECTOR