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## Appeal Decisions

Site visit made on 29 July 2019

**by Rajeevan Satheesan BSc PGCert MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3<sup>rd</sup> September 2019**

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**Appeal Ref: APP/C1435/W/19/3226973**

**Hop Garden Nursery, Eastbourne Road, Halland BN8 6PS**

- 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 Fergus Chalmers on behalf of Millwood Designer Homes against Wealden District Council.
  - The application Ref WD/2017/0331/MAJ, is dated 10 February 2017.
  - The development proposed is erection of 21 dwellings (including 7 affordable units) with amended access and associated garaging and parking.
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### Decision

1. The appeal is dismissed, and planning permission is refused for the erection of 21 dwellings (including 7 affordable units) with amended access and associated garaging and parking at Hop Garden Nursery, Eastbourne Road, Halland BN8 6PS.

### Procedural Matters

2. The Council have referred to the emerging Wealden Submission Local Plan, 2019 (ELP), which was submitted to the Secretary of State for Examination on the 18 January 2019. The Examination in Public began on the 21 May 2019. However, there is no substantive evidence before me of the extent to which its policies and allocations are subject to unresolved objections. Furthermore, I have been provided with no indication as to the timetable for modifications and indeed whether the emerging policies included within the Council's appeal statement would be subject to modifications. Therefore, I give the ELP limited weight.
3. The appeal was submitted due to the failure of the Council to give notice, within the prescribed period, of a decision on the application, and it is on this basis that the appeal has been determined. However, the Council's appeal statement outlines what their decision would have been if an appeal against non-determination had not been submitted. Their concerns relate to the proposed location of the dwellings beyond the adopted and emerging development boundary: and in combination impacts upon the Ashdown Forest, designated as a Special Protection Area (SPA) and a Special Area of Conservation (SAC) and Lewes Downs, designated as a SAC. The Council have confirmed in an email dated 8 August 2019 that they no longer raise an

objection regarding surface water run-off. I have determined the appeal on this basis.

### **Main Issues**

4. Consequently, I find the main issues are:

- whether the proposed development would provide a suitable location for housing, having regard to local and national policies, the accessibility of services and facilities and policies concerned with rural housing; and
- whether the proposed development would be likely to have adverse effects upon the integrity of the Ashdown Forest, designated as a SPA and a SAC, and Lewes Downs, designated as a SAC.

### **Reasons**

#### *Suitability of the location*

5. The appeal site is located to the rear of properties on the western side of Eastbourne Road (A22)<sup>1</sup>. The site is a former nursery site that was previously used for growing Christmas trees, and comprises an area of largely open grassland with hedges, trees and an Ancient Woodland to the south of the site<sup>1</sup>. The site has a vehicular access located between the residential properties of Yarrow Bank and Kimberley.
6. The proposal is for 21 new dwellings with associated off-street parking. The proposal would be served by the existing access, which would be widened, and a new access drive would be created within site. The proposal would comprise 14 open market dwellings and 7 affordable units.
7. The Council state that the site is not located within any defined development boundary (DB) in the adopted development plan. The DB for Halland was removed by Policy WCS6 of the Wealden District Council (incorporating part of the South Downs National Park) Core Strategy Local Plan, 2013 (CS). The DB was removed to restrict further growth in this settlement, because the village was designated as one where further development was considered unsustainable.
8. The site is also not located within the proposed Core Area for the village of Halland in the ELP. The purpose of Core Areas is to allow small scale scattered growth which reads as natural development to a settlement. The intention is for new development to take place near to the centre or heart of the settlement in order to promote sustainability, with physical connectivity to the community and facilities<sup>2</sup>.
9. As such, although the site is located on the edge of a village, due to its location outside any DB, in planning policy terms, it is located within the countryside. Saved Policies GD2 and DC17 within the Wealden Local Plan 1998 (LP) generally resist new housing development in the countryside which is not essential for agriculture or forestry needs or has some other similar justification for a rural location (such as rural affordable housing exception sites). The proposal is not a rural affordable housing exception site and no evidence has

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<sup>1</sup> Taken from the appellant's appeal statement.

<sup>2</sup> Taken from Core Areas and Boundary Review Background Paper January 2019, lodged as part of the Submission Local Plan

been submitted to demonstrate that the proposal would comply with any of the other any of the categories listed under the above policies. Even if this was considered a rural affordable housing site, no s106 agreement or unilateral undertaking has been provided as part of this appeal to secure the affordable housing (AH). The site is also not within any strategic development area identified within policies WCS4 and WCS6 of the CS. Therefore, the principle of the development in this location would be contrary to the above mentioned policies.

10. Furthermore, no s106 agreement or unilateral undertaking has been provided as part of this appeal to secure the 7 Affordable units proposed. The *Planning Practice Guidance* (PPG) advises that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency<sup>3</sup>.
11. I have no completed planning obligation before me which would secure the provision of the proposed AH. There would be considerable intricacies involved including securing the housing as affordable in perpetuity at an appropriate rent or sale price, the approval of the size, tenure, and mix of the housing, and the phasing and transfer, if necessary, to a registered provider. I have no evidence that a condition could secure such matters with the necessary precision and certainty. The development itself is neither complex nor strategically important and therefore the basic tests for considering whether to secure an obligation through a negatively worded condition would not be met. Therefore, in the absence of any suitable mechanism for securing the AH, I can only give this matter very limited weight.
12. Policies SP07 and SP08 of the CS encourage the reduction in the need to travel by car and a network of villages to support the day-to-day needs of rural communities and accord with the National Planning Policy Framework (Framework) policies on rural housing.
13. There is little in the way of day to day services and facilities within Halland, which includes Staverton Nursery (a garden nurse and farm shop), two public houses (one includes a restaurant and B&B accommodation), a garage and a chapel. The village of East Hoathly, approximately 2km away<sup>4</sup>, has a primary school, and the nearest station is Uckfield Railway Station, situated around 3.2 miles from the site<sup>5</sup>. Although there are bus services to larger local towns, given the relative distances to nearby larger settlements, and the limited range of services and facilities in Halland, future occupiers of the development would nevertheless be largely reliant on the private motor car to access shops, services, facilities and employment. This is supported by the appellant's Transport Report<sup>6</sup> which states that the development would likely give rise to increased traffic to/from the site with 86 daily two way trips over a typical 12 hour day (0700-1900 hours).

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<sup>3</sup> PPG ID: Paragraph: 010 Reference ID: 21a-010-20190723

<sup>4</sup> Taken from the appellant's appeal statement

<sup>5</sup> Taken from the Transport Report prepared by GTA Civils Consulting Engineers

<sup>6</sup> Prepared by GTA CIVILS Consulting Engineer, dated February 2017.

14. In relation to paragraph 79 of the Framework, given the proposed dwellings' location to the rear of the linear development along the A22, the appeal site would not be considered to be 'isolated'. Thus, there would be no conflict with paragraph 79 of the Framework. However, Paragraph 103 of the Framework states that the planning system should actively manage patterns of growth through limiting the need to travel and offering a choice of transport modes. As outlined above, the development would be largely reliant on the private motor car and therefore the site does not fulfil these requirements.
15. Paragraph 78 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. The proposed development for 21 dwellings would contribute towards rural communities, which is in accordance with CS Policy SP08, and Paragraph 78 of the Framework.
16. However, the proposed development would not provide a suitable location for housing having regard to local and national policies, the accessibility of services and facilities and policies concerned with rural housing. Therefore, it would not accord with Saved Policies GD2 and DC17 of the LP, and Policies WCS4, WCS6, and SP07 of the CS. Amongst other things, these seek to preclude residential development outside development boundaries and in the countryside unless in accordance with specific policies in the Plan and seek a reduction in the need to travel by car. These policies generally accord with the Framework and therefore I attach significant weight to them.

*Ashdown Forest (SPA and SAC), and Lewes Downs (SAC)*

17. The LP, CS and the ELP include policies to protect the Ashdown Forest (SPA and SAC), and Lewes Downs (SAC). The Court of Justice of the European Union has issued a judgment<sup>7</sup> that potential mitigation for SPAs/SACs cannot be taken into account when determining whether an Appropriate Assessment (AA) is required but may be considered if an AA has been undertaken and determined that the development would harm the integrity of the designated European sites. If I had been minded to allow the appeal, as the 'competent authority' it would have been necessary for me to go back to the parties to seek further information and consult Natural England in order to complete an AA for this development. However, as I am dismissing for other reasons it is not necessary for me to consider this matter further as it would not change the outcome of this appeal.

*Other matters*

18. The appellant has referred to a number of other decisions in support of their scheme. However, none of the cases referred to relate to the same site as the proposal before me, and the circumstances in each case are likely to be different. Furthermore, reference has been made to the appeal decision at Land at Camberlot Stables, Camberlot Road, Upper Dicker BN27 3RG<sup>8</sup>. However, this decision was challenged by the Council, and subsequently quashed. I have therefore not relied on that decision for the determination of this appeal. In any case I have determined the proposal on its merits and in accordance with the legislation and local and national policies.

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<sup>7</sup> People over Wind, Peter Sweetman v Coillte Teoranta Case C-323/17

<sup>8</sup> Appeal Ref: APP/C1435/W/18/3197286

19. I appreciate the appellant may have experienced delay in waiting for a decision from the Council but the way in which the Council handled the application is not a matter for me to consider in the context of an appeal under section 78.

**Planning balance and conclusion**

20. There is no dispute that the Council cannot currently demonstrate a five year housing land supply, with the Council stating that they have a 2.62 year supply. Therefore, Paragraph 11d of the Framework and the presumption in favour of sustainable development is engaged.
21. The proposal would provide 21 additional dwellings (including 7 AH) which would help meet the housing needs of the area. However, as outlined above, no s106 agreement or unilateral undertaking has been submitted to secure the AH. Therefore, I attach only moderate weight to the social benefits of the scheme, which is located outside of any adopted or emerging DB. There would be a modest economic benefit to the area, in terms of construction jobs, and an equally modest increase in investment in the area following the occupation of the development. However, the location of the development would conflict with the development plan policies and the Framework policies as a whole.
22. The Council consider that the 'tilted balance' under Paragraph 11d(ii) of the Framework should not apply due to the likely effect on SPA and SACs. However, even when applying the tilted balance, the development would be contrary to the development plan and the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
23. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be dismissed, and planning permission refused.

*R Satheesan*

INSPECTOR