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## Appeal Decision

Hearing opened on 27 October 2015

Site visit made on 28 October 2015

**by Brian Cook BA (Hons) DipTP MRTPI**

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

**Decision date: 10 December 2015**

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**Appeal Ref: APP/Z3825/W/15/3022944**

**Haglands Lane, West Chiltington, West Chiltington Common RH20 2QS**

- 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 Michael Stephens (Castle Land and Development LLP) against the decision of Horsham District Council.
  - The application Ref DC/14/2248, dated 13 October 2014, was refused by notice dated 25 March 2015.
  - The development proposed is outline planning application for the development of 21 no. 1, 2, 3 and 4 bedroom houses (13 market and 8 affordable) with access from Smock Alley, vehicle parking, public open space (including balancing pond and 1.5ha of woodland), buffer zone for badgers and wildlife corridors, landscaping and upgrading of public footpath to village centre.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. Prior to the Hearing being opened an application for costs was made by the appellant against the Council. This was withdrawn at the opening of the Hearing given the circumstances explained below.

### Procedural matters

3. The planning application has been made in outline. Of the reserved matters, access and layout are for determination now while appearance, landscaping and scale are for determination at a future date.
4. A Statement of Common Ground was agreed and submitted by the appellant. However, for reasons that are set out in the following, it was of limited assistance.
5. This appeal has run in a period during which the development plan has been evolving. Briefly, the Horsham District Planning Framework (HDPF) was found sound by the examining Inspector with his report being published on 8 October 2015. The Council confirmed at the Hearing that it intended to adopt the HDPF on 19 November and the appellant provided the entire text of the HDPF as it would be adopted. On doing so, the Core Strategy 2007 would be replaced and the policies from it cited in the reasons for refusal would cease to have any effect. In addition, the Council's case was that, on adoption, it would be able to demonstrate a 5 year supply of deliverable housing sites in accordance with

- paragraph 47 of the National Planning Policy Framework (the Framework). This would represent a significant change in its position which, up the point of adoption, was that it could not do so.
6. The appellant's position was that the mere adoption of the HDPF and a reliance on the findings of the examining Inspector was insufficient to confirm that at the appeal decision date there was a 5 year supply of deliverable housing sites. The appellant argued that evidence needed to be adduced to that effect by the Council.
  7. A further matter concerned the Unilateral Undertaking (UU) submitted by the appellant to address reason for refusal 3. While the contents were not disputed by the Council, the means by which the obligations would be secured were. The appellant accepted that the proposed mechanism was flawed and suggested that a further version should be submitted.
  8. A number of matters were agreed in these somewhat unusual circumstances.
  9. First, it was agreed that my decision should be delayed until the adoption of the HDPF was confirmed. The Hearing proceeded on the basis that it would be adopted.
  10. Second, it was agreed that further evidence regarding the 5 year housing land supply position would only be required if I was minded to dismiss the appeal but considered that this conclusion could be outweighed by an adverse finding on housing land supply. In the event that I concluded that the appeal proposal would accord with the development plan as a whole, the appeal would be allowed. Conversely, if I concluded that the appeal proposal was very clearly contrary to the development plan as a whole and that this conflict would not be outweighed by any shortfall in housing land supply, the appeal would be dismissed. In either of those cases, further work on housing land supply would be unnecessary and an inefficient use of resources.
  11. Finally, it was agreed that in the event of the Council not adopting the HDPF on 19 November, the Hearing may need to be re-opened in any event having considered further statements from the parties.
  12. The appellant was therefore given until 20 November to complete the UU and send it to the case officer at the Planning Inspectorate. The Council was also required to confirm to that officer on 20 November that the HDPF had indeed been adopted. Both parties wrote as requested with the Council confirming that the HDPF had indeed been adopted. The formally adjourned Hearing was therefore closed in writing on 25 November.
  13. I carried out an extensive but informal visit to the site and the surrounding area before the Hearing opened. I had therefore already viewed the site and the area from some of the points shown on Plan 1. Others were not on land to which there was public access and I explained that I would not be able to view from those. After the accompanied site visit ended, I went to some of the others viewpoints suggested unaccompanied. I did not visit all of them because, as I had already suggested would be the case, the site itself was obscured by the many mature trees that were still in full leaf. I considered that I had already gained an appreciation of the nature of the area from my informal visit.

14. The West Chiltonington Parish Neighbourhood Plan 2015: Pre-submission version (Document 9) is at an early stage in the process to adoption. The main parties agreed that in accordance with Framework paragraph 216, very little weight should be afforded to this emerging plan.

### **Main Issues**

15. In the light of the matters that are before me for determination of this outline application, my review of the evidence, the discussion at the Hearing and my inspection of the site and the surrounding area I consider the main issues to be:
- (a) Whether the appeal development would accord with the spatial strategy of the HDPF;
  - (b) The effect that the development would have on the character and appearance of the area;
  - (c) The effect that the development would have on the living conditions of the occupiers of neighbouring properties; and
  - (d) Whether the offered UU would address reason for refusal 3 and meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended), particularly Regulations 122(2) and 123(2).

### **Reasons**

#### ***Whether the appeal development would accord with the spatial strategy of the HDPF***

16. HDPF policies 2, 3, 4 and 15 explain how the Council will provide the development required over the Plan period with policy 15 concentrating on housing delivery.
17. Policy 3 sets out a development hierarchy and says that development will be permitted within towns and villages which have defined built-up areas. West Chiltonington Village and Common are listed as a 'medium' village in this policy. It has a development boundary which the Council explained would be updated to the point of HDPF adoption to reflect approvals of planning permissions.
18. Policy 4 addresses settlement expansion saying that the growth of settlements will continue to be supported in order to meet development needs. It then sets out five criteria, all of which must be met (because of the linking 'and' between criteria (d) and (e)) for expansion of settlements outside built-up area boundaries to be supported.
19. Policy 15 addresses only housing provision and sets out how the required number of homes will be brought forward. For the purposes of this appeal it is parts (d), the provision through Neighbourhood Plans, and (e), the provision of 750 dwellings through windfall sites, that are material. Windfall sites are defined in the HDPF Glossary as 'a site not specifically allocated for development in the Local Development Framework which unexpectedly becomes available for development during the lifetime of a plan.' The Council accepted that, as defined, the appeal proposal would be a windfall site.
20. In simple terms, the Council's position is that since the appeal site is beyond the settlement boundary and is not allocated in a local plan or a Neighbourhood Plan the appeal proposal would conflict with the HDPF. I do not believe that to

be a proper interpretation of the wording of the policies that I was taken to by the parties.

21. Policy 15 clearly envisages 750 dwellings coming forward on sites which are not allocated by the HDPF, a Neighbourhood Plan or any other local plan; specifically therefore, from windfall sites. Not only is that clear from the way the policy is constructed, it is also clear from the way in which 'windfall sites' are defined.
22. However, such a site could not come forward under policy 4 because of the 'and' already referred to above. Given criterion (a) of that policy (which requires the proposed site to be allocated in the local plan or in a Neighbourhood Plan and to adjoin an existing settlement edge) it is simply not possible for a windfall site to be considered under that policy. I was not directed to any other policy against which a windfall site proposal could be considered. The only sensible way therefore to interpret policy 4 where development on a windfall site is proposed is to either omit the 'and' between criteria (d) and (e) or read an 'or' between criteria (a) and (b).
23. Accordance or not with the policy, and thus with the spatial strategy, therefore requires an assessment of a proposed windfall scheme against each of the criteria. To the extent that it is appropriate to take into account what is an ambiguous policy, that will be addressed under my other main issues. What, in my view, is clear however is that the Council is incorrect to argue that the development proposed would be contrary to the HDPF spatial strategy as a matter of principle.

***The effect that the development would have on the character and appearance of the area***

24. Under this issue I shall also consider whether the layout proposed would amount to good design as required by Framework section 7. Framework paragraph 56 confirms that good design is a key aspect of sustainable development while Framework paragraph 58, bullet 4 requires planning decisions to aim to ensure that developments 'respond to local character and history, and reflect the identity of local surroundings and materials while not preventing or discouraging appropriate innovation'. It is no part of the appellant's case as I understand it that the proposed development would be innovative in any way. As framed in national policy therefore good design is inextricably linked to an appraisal of the character of the area into which a development would be introduced.
25. The settlement of West Chiltington is in two parts. What local residents described as the historic core lies to the north on higher ground. The school is there. To the south and almost wholly separated by open land is the much larger West Chiltington Common. The appeal site lies at the eastern edge of this part of the settlement and would become part of the triangular residential area enclosed by Haglands Lane to the north, Smock Alley to the east and Lordings Lane to the south and west. The latter is a private road along which runs a public right of way.
26. Between the junctions of both Haglands Lane and Lordings Lane with Smock Alley there is The Hawthorns. Although in essence a cul-de-sac development, it has some 6 dwellings on the southern side while those on the northern side are in a more complex arrangement. There is no head with dwellings arranged

- around it as can be typical of such developments, no turning circle or, as far as I could see, any turning points. It is simply a residential road with individual accesses to the dwellings.
27. To the east of Smock Alley and with direct vehicular accesses to it are a small number of substantial dwellings. They are opposite the appeal site and most can be clearly seen from the highway, notwithstanding the boundary treatments.
  28. In this triangular area most of the dwellings are detached and stand in very generous plots. Although exhibiting a wide range of styles, they are typically single or one-and-a-half storey in height. Planting is extensive within the grounds and on the boundaries. My impression of the character walking through this area was one of privacy and tranquillity with often only glimpses of the dwellings themselves. As a result of the local topography, many of the dwellings are set down into the landscape. From a distance looking across this area the combination of the tree cover, the height of the buildings and the topography mean that it is often only the roofs or, in some cases, the upper storeys of the dwellings that can be glimpsed. Overall it appears as having a semi-rural character with intermittent dwellings visible.
  29. The appeal site is a field that rises to the west from Smock Alley by about 10 to 11m. At the top of the slope but outside the application site is an area of woodland subject to a Tree Preservation Order. Although lying to the south of Haglands Lane the narrow nature of that Lane combined with the woodland at the top of the slope means that, in my judgement, the appeal site reads as part of the open countryside that separates the two parts of the settlement and which HDPF policy 25 seeks to maintain. Although of little intrinsic landscape value in itself, it is the contribution towards this settlement separation that is the most important landscape characteristic of the appeal site.
  30. As the appellant fairly acknowledged, the appeal proposal would extend the residential development of the village into this undeveloped area and was therefore bound to have some eroding effect on this important contribution to the landscape character. Determinative for this issue therefore is the extent to which the layout responds to local character and history, and reflects the identity of local surroundings. In my view it simply would not do so.
  31. The Design and Access Statement is very brief. Furthermore, the appellant confirmed at the Hearing that this had been prepared to inform an earlier iteration of the proposed layout and not updated to reflect that before me for approval.
  32. There are a number of factors that influence the design of the appeal scheme. The first and perhaps most important is the treatment of the existing boundary planting. Unsurprisingly, the decision was taken to retain this and indeed strengthen it in places. Not to do so would have had a significant impact upon the Smock Lane frontage in particular. However, as the appellant recognised at the Hearing, referring to it as a 'Catch 22', the consequence is that the development would be wholly enclosed, inward looking and unrelated to the development to its south and east. While physically extending the settlement, it would not be connected to it at all other than by the footpath link that is proposed through the woodland to the west.

33. Second, there are a number of significant constraints to the development of the site. The most important are the two badger setts. A number of sett entrance holes are within the appeal site itself and what Ms Cooper described as a 'badger motorway' was pointed out to me during my inspection of the site. This was running through an area proposed to be developed for housing which tends to lend weight to the concerns she expressed regarding the effect on their foraging area. In any event, a quite substantial area has been set aside to protect the sett and this inevitably impacts upon the layout proposed.
34. The requirement for a sustainable urban drainage system dictates the need to incorporate a small balancing pond. The fall of the land requires this to be located towards the Smock Alley boundary and it would be the first feature to be seen on entering the development. Its detailed design would be a matter for future approval but since it would be overlooked by at most two properties (and even that would depend on the windows inserted into what would be flank elevations), safety would be a key consideration and the response to that would affect both its appearance and its function as a feature within the development.
35. There was also a policy requirement to include an element of public open space. This has been provided as a piece of land surrounded on all sides by that part of the internal road giving access to all but three of the proposed dwellings. This will be 5m in width to allow refuse vehicles and fire tenders to pass any parked cars. While I accept that it would be wrong in a small development to characterise it as a traffic island, I am doubtful that it would function as a village green or an area where residents would sit out as suggested by the appellant.
36. Finally, I was invited to include reference to the recommendations in Document 1 in any ecological management plan conditions imposed on a planning permission. These require exclusion areas within the site, the establishment of wildlife buffers around the perimeter of the field that should not be incorporated into any residential gardens, limits on access to the woodland to the west and control over lighting within the site and, therefore, within certain residential gardens. These measures are required primarily to protect the badgers and bats that are known to be present within or on the margins of the appeal site.
37. The design response to all these matters would be what I consider to be a modest urban or suburban cul-de-sac housing estate. The dwellings would be arranged mainly in three lines along the contours with one short terrace crossing them. Only five of the dwellings would be detached. The remainder would be semi-detached except for two short terraces of three. Plots sizes are correspondingly proportioned and, in my view, the opportunity for the extensive planting within them characteristic of the wider area would be limited. Since most of the dwellings would be very close to the highway, their front elevations would be open to view. In this and most of the other respects, the proposed development would be completely at odds with the character of this part of the settlement.
38. Although the development would be enclosed, it would be visible, particularly in winter when the trees are not in leaf, from outside the site boundaries. This would be especially so for those dwellings towards the higher part of the land. From Smock Alley the estate would be visible through the widened access and

through the boundary trees, particularly in winter. Although a private view, I was able to see from Lavender Cottage the extent to which the residents' appreciation of the character of the area in which they live would change. I was told that similar views across the site were available from some rooms of certain properties in The Hawthorns. This is therefore a matter to which I attribute some weight. The appellant did offer to accept a height restriction on certain plots on the higher ground but this would have only a minor mitigating effect in my judgement.

39. To conclude on this issue, the appeal proposal would introduce development into the open land separating the two parts of the settlement as a whole. It would erode that settlement separation to a degree and would thus conflict with HDPF policy 25 in this respect. Although the appellant's Landscape and Visual Impact Assessment describes the landscape character impact as 'medium', the key landscape characteristic, in my judgement, is the contribution that this edge-of-settlement site makes to that settlement separation. It would therefore conflict with the second part of HDPF policy 26.
40. The appellant fairly acknowledges that the layout proposed is somewhat of a compromise resulting from the many design challenges posed by the particular characteristics of the site. For the reasons set out, I do not consider that the response is at all appropriate for or responsive to the character of the area in which the development would be introduced. For those reasons, the development would conflict with HDPF policy 33 (d) and, if it can be considered in isolation, HDPF policy 4 (e). It would also conflict with bullet 4 of Framework paragraph 17, which sets out the core planning principles, Framework section 7 generally and Framework paragraph 58, bullet 4 in particular.

***The effect that the development would have on the living conditions of the occupiers of neighbouring properties***

41. Lavender Cottage is the dwelling that would be closest to the proposed development. The nearest part of the dwelling on plot 1 would be about 12m or so from its rear elevation while the dwelling proposed for plot 10 would be a little further distant. Lavender Cottage lies at a slightly lower elevation than the appeal site and the dwelling itself is very close to the common boundary. The dwellings on plots 1 and 10 are not among those that the appellant suggested could be subject to a height restriction. They would therefore be two-storey with a ridge at a materially higher level than Lavender Cottage.
42. From the appeal site the rear and a side elevation of Lavender Cottage are clearly visible. There are a number of windows at ground and roof level, most of which are to main habitable rooms. I looked out across the appeal site from each of these.
43. At present, the view from each of these rooms is across an open field to which there is no public access via any public right of way. Lavender Cottage is not therefore overlooked as evidenced by the fact that each bathroom had clear glass in the windows. At reserved matters stage the Council could ensure that the proposed dwellings are designed so that there would be no window-to-window views into Lavender Cottage from any of the dwellings proposed. However, that would not be the case from the private gardens of either plot 1 or, to a lesser degree, plot 10. Indeed, the occupiers of Lavender Cottage would, in my opinion, have a fairly clear view into the rear garden of plot 1, including the more private part closest to the house. The proposed layout

would therefore cause harm with respect to privacy from overlooking for both the existing residents of Lavender Cottage and those who would occupy plot 1.

44. Although this harm may be capable of being mitigated through boundary planting within plot 1 that would raise a further issue of the development outcome appearing overbearing in the outlook from Lavender Cottage. This would be exacerbated by what is likely to be the plot 1 dwelling flank elevation being unrelieved by any windows other than, perhaps, one to a bathroom in order to address the window-to-window privacy issue. I accept that the Holly tree in the space between Lavender Cottage and the common boundary with the appeal site would filter that view to some extent but I consider that the view to an essentially blank brick or rendered wall of two-storey height would appear overbearing at such close proximity.
45. I therefore consider that the positioning within the layout of the dwelling and the private amenity space at plot 1 would harm the living conditions of the occupiers of Lavender Cottage. The appeal proposal would therefore conflict with HPDF policy 33 (b) in this respect.

***Whether the offered UU would address reason for refusal 3 and meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended)***

46. The appellant has submitted a UU under s106 of the Act. At the Hearing the Council confirmed that the adoption of the HDPF would create an anomaly whereby there would be no policy support for contributions towards any district council function other than affordable housing to be secured by way of a s106 obligation. Notwithstanding this, I was specifically asked to come to a view on the play spaces contribution required and offered.
47. My view is that it would be preferable to provide any play space required within the appeal site, perhaps through a reconsideration of the role and positioning of the public open space. If the contribution is intended to enhance the existing facilities in the settlement, they would be some distance from the development and unlikely in my view to be used informally by children on the development. On the evidence before me, I do not consider that the contribution is necessary to make the development acceptable in planning terms and thus does not meet the statutory tests in CIL Regulation 122 or the advice in Framework paragraph 204.
48. The UU secures the affordable housing that is proposed as part of the appeal proposal. This clearly meets the statutory tests set out in CIL Regulation 122 and the advice in Framework paragraph 204.
49. The County Council requires contributions towards primary, secondary and sixth form education, libraries, the Fire and Rescue Service and transport. Amounts and the method by which they have been calculated and how the sums secured would be spent are set out in a communication from the County Council dated 13 August 2015.
50. Subject to further evidence from the County Council regarding the maximum of five pooled contributions (CIL Regulation 123) I believe that the education and libraries contributions meet the tests set out. The calculation and sum resulting is not disputed by the appellant and specific schemes to which the contributions would be put are identified.



51. As I understand it, the Fire and Rescue Service contribution would be used to provide community fire link smoke detectors within the parish. This seems to me to be an existing and ongoing service improvement that is unaffected by and therefore not directly related to the development proposed. It is clearly not necessary to make the development acceptable in planning terms and thus does not meet CIL Regulation 122 or the advice in Framework paragraph 204.
52. The transport contribution raises a number of difficulties. First, the development plan justification given is a policy in the emerging West Chiltonington Neighbourhood Plan. For the reasons set out earlier, little weight can be afforded to this emerging document. Second, as far as I can see, the specifics of the project to which the contribution would be put are not set out. Finally, in contrast to all the other requirements, there is no confirmation that the CIL Regulation 123 requirement with respect to pooling can be met. On the evidence before me therefore I do not consider that this contribution meets CIL Regulation 122 or the advice in Framework paragraph 204.
53. Subject to the general and specific reservations set out, I consider that the UU is a material consideration to which I should attach substantial weight and which would be capable of overcoming the Council's reason for refusal 3.

### **Other matters**

54. The means of access is shown on the application drawings. Subject to a condition securing the provision of the required visibility splays, the Highway Authority raises no objection. I saw that only a limited amount of lower level vegetation would need to be removed to achieve the necessary visibility and have no reason to disagree with the Council on this aspect.
55. While the walk to the village centre where there is a Post Office and NISA shop selling a wide range of everyday goods is along unlit narrow roads with limited footways, it took me only about 10 minutes. The linking footpath proposed as part of the development would shorten this journey time. Whether the walk which would be through the woods in the main would be any more attractive in the winter particularly is a matter of subjective judgement. In my view, it would be very unlikely that any child would be walked from the development to the school given the distance and the roads along which the journey would be made.
56. However, the settlement is included within HDPF policy 3 as one where development will be permitted within the defined built-up areas in order to deliver the spatial strategy of the HDPF. Policy 15 suggests that at least some of the 1500 homes (minimum) to be provided beyond the strategic sites will be in such settlements. In the particular circumstances of this settlement, I consider the way reason for refusal 1 was framed to be untenable and inconsistent with the HDPF.

### **Conclusions**

57. At the outset of the Hearing I put a number of propositions to the parties. Citing case law Mr Warren did not agree with the first (that Framework paragraph 14 only applied where the proposal amounted to sustainable development) but he did agree with the fourth (that the appeal proposal would not be sustainable development if it conflicted with the policies of the development plan). For the reasons set out above I have concluded that, while

the appeal proposal does not conflict with the spatial strategy of the HDPF as a matter of principle, on the fundamental issues of design, landscape character and effect on living conditions, the layout proposed does conflict with the relevant HDPF policies. Since the delivery of the spatial strategy requires compliance with other policies setting out detailed requirements to be met by all development the proposal therefore conflicts with the development plan as a whole. I do not consider that this conflict would be outweighed by any shortfall in the five year housing land supply particularly as Framework paragraph 56 states that good design is a key aspect of sustainable development and is indivisible from good planning. I have not therefore sought to have further evidence adduced on this matter.

58. For the reasons given above I conclude that the appeal should be dismissed.

*Brian Cook*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Rupert Warren QC	Instructed by Paul Collins Phoenix Planning Consultancy
Paul Collins MRTPI	Phoenix Planning Consultancy
Stephen Dale CMLI	ACD Landscape

### FOR THE LOCAL PLANNING AUTHORITY:

Lesley Westphal	Senior Planning Officer
Emma Faith	Planning Officer
Mathew Bright BSc (Hons)	Senior Associate David Huskisson Associates landscape consultants to the Council

### INTERESTED PERSONS:

Sharon Davis	Local resident
Sean Davis	Local resident
Dr R F Smith	CPRE Sussex
Marshall Monks	Local resident
Carolyn Kirby	Local resident
Tina Cooper	Local resident
Michele Clare	Local resident
Allan Finlay	Local resident
Gary Constable	Local resident
Louise Constable	Local resident

## **DOCUMENTS SUBMITTED BY THE APPELLANT**

- 1 Ecological Appraisal dated July 2015
- 2 Appellant's summary points (interim closing submissions) including *Cheshire East Borough Council v Secretary of State for Communities and Local Government and Richborough Estates Partnerships LLP* [2015] EWHC 410 (Admin)
- 2A Unilateral Undertaking dated 19 November 2015

## **DOCUMENTS SUBMITTED BY THE COUNCIL**

- 3 Extract from Committee Report dated 15 September 2015 in respect of application DC/15/1389
- 4 West Chiltoningon Parish Council comments on application DC/15/1389

- 5 List of suggested conditions
- 6 Closing submissions

**DOCUMENTS SUBMITTED BY THE INTERESTED PERSONS**

- 7 Birds seen in or around the garden of The Oaks, Smock Alley
- 8 Letter from Southern Water dated 29 July 2015 re: application DC/15/1389
- 9 The West Chiltonton Parish Neighbourhood Plan 2015: Pre-submission version

**PLANS**

- 1 Recommended site visit route submitted by the Council