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## Appeal Decision

Hearing held on 20 September 2016

Site visit made on 21 September 2016

**by Kenneth Stone BSc (Hons) DipTP MRTPI**

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

**Decision date: 2 November 2016**

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**Appeal Ref: APP/Z3825/W/16/3146231**

**Land west of Smock Alley, West Chiltington, West Sussex.**

- 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 Michael Stephens (Castle Land and Development LLP) against the decision of Horsham District Council.
  - The application Ref DC/15/1389, dated 20 June 2015, was refused by notice dated 17 September 2015.
  - The development proposed is described as Outline application for the development of land with 0.785 hectares of residential development comprising up to 19 dwellings together with ancillary roads, landscaping, vehicle and cycle parking and 0.540 hectares of public open space strategic landscaping with vehicular and pedestrian access from Smock Alley and a new public footpath link to existing public footpath number 2468.
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### Decision

1. The appeal is dismissed.

### Preliminary matters and Background

2. The application the subject of this appeal was submitted in outline with all matters reserved except access. The appellant had included an amended description for the development at the time of the submission of the appeal to reduce the number of units to up to 14 and to provide for an increased amount of land given over to open space, strategic landscaping and biodiversity. I accept that in effect the original description of development could be said to cover the less intense development and could be the subject of conditions to curtail development to these new parameters. I am concerned however that, whilst in the public domain, the local residents had not picked up on this matter until late in the day. To avoid prejudice therefore I will consider the development in the context of the original description, but will also consider whether appropriate conditions could be attached to any permission to restrict development to the reduced scheme in such a manner as to overcome any concerns should they arise.
  3. The appellant also noted at the start of the hearing that no matter my view on the description of development that that aspect of the description referring to the new public footpath link to the existing public footpath number 2468 was withdrawn as this no longer formed part of the scheme. This is not fundamental to the nature of the proposal and I accept as an amendment to the description of the development.
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4. I conducted a hearing in respect of appeal APP/Z3825/W/16/3145622 for a site at Tuggles Plat in the same Local Authority area for a residential development on behalf of the same appellant, although I acknowledge the appellant company was named differently, (Castle Land and Development (Southern) LLP), in the week following this hearing. Whilst much of the information before me was similar I have considered this appeal on the basis of the information submitted in respect of this appeal as I am required to do. The issues related to five year housing land supply and interpretation of the Council's spatial strategy are common themes and are matters on which I have reached similar conclusions.
5. I have considered the appeal on the basis of the above.
6. The Council refused planning permission for four reasons in broad terms these related to the Council's spatial strategy, the locational sustainability of the site, the effect on landscape and the effect on infrastructure requirements arising from the development, including affordable housing.
7. Following the submission of the appeal the Council withdrew its objections to the scheme based on locational sustainability. I was provided with a Statement of Common Ground just before the start of the hearing with an attached draft Unilateral Undertaking (UU). On the basis of the draft UU the Council confirmed at the start of the hearing that it no longer wished to pursue its objection to the scheme on the basis of the effect on the infrastructure requirements of the scheme as these matters would be secured through the UU, provided of course that a completed UU was submitted. It was not possible to provide me with a finalised UU by the close of the hearing but I agreed with the parties I would accept one provided it was submitted within an agreed timetable. I received a certified copy of a signed and sealed UU dated 26<sup>th</sup> September 2016, before the agreed deadline.
8. The Statement of Common Ground highlighted that the main parties disagreed as to whether the Council could demonstrate that it had a five year supply of deliverable housing sites and therefore whether paragraph 49 of the Planning Policy Framework (the Framework) was engaged, which advises that relevant policies for the supply of housing should not be considered up to date if the Council cannot demonstrate such.
9. The Development Plan for the area comprises the Horsham District Planning Framework (HDPF). This plan was adopted very recently, in November 2015, following on from an Inspector's report concluding the plan was sound, dated October 2015. The plan's base date is 2011 and in broad terms the document provides for an Objectively Assessed Housing Need (OAHN) of 650 dwellings per annum, with a further 150 units per annum added to produce an overall requirement of 800 dwellings per annum, to include Horsham's duty to co-operate and address some of the shortfall from Crawley.
10. The appellant confirmed that they did not seek to question the OAHN or overall requirement level in the HDPF but suggested that an adjusted requirement level should be used against which to calculate the 5 Year Housing land supply. In effect it was suggested that in the previous periods covered by the previous development plans a shortfall was identifiable and this should be added to the HDPF requirement to get an adjusted requirement. The previous plans included the Horsham District Core Strategy, adopted 2007, which had a base date of 2001; and the South East Regional Strategy 2009, which had a base

date of 2006 and which was revoked in 2015. The appellant calculated that there was a cumulative shortfall over the period 2001 – 2011 of 1, 475 dwellings which should be added to the HDPF requirement figure. They also sought to argue that a 20% buffer figure was appropriate due to persistent under supply but I shall return to this matter below.

11. The Council have a recently adopted sound development plan including an OAHN which is not directly challenged by the appellant. The OAHN would need to consider the housing needs of the area as at the base date of the plan, 2011. In effect this draws a line under the previous housing provision of the Council, in terms of requirements, as the Objectively Assessed Need should consider the pressures for housing in the area at that time and identify a figure representing that need. In effect if there has been any under provision in previous years this would be accounted for in the latent need that would be identified in this process. Adding additional under supply from previous periods would result in double counting the effect of that undersupply driving need as that would be caught within the overall need assessment. On this basis I do not think it appropriate to add the historic undersupply beyond the base date of the existing plan to the requirement of the extant plan.
12. That is not to say there may not have been undersupply from the base date of the plan from 2011 to the current date 2016 which would need to be addressed and it would be right to add this level of under supply to the plans requirement. The historic undersupply is however relevant in relation to the issue of the buffer.
13. The Council's Mid-year Update – May 2016 Chapter 3 Housing identifies a shortfall since 2011 of 775 dwellings and with the latest figures the parties provided evidence which demonstrates that this has reduced to 363 dwellings. On this basis the requirement against which to measure the 5 year housing land supply is 4, 363 plus a buffer.
14. Moving to the issue of the buffer the appellant suggests the Council has a persistent record of under delivery and thereby suggests that a 20% buffer would be appropriate. This would raise the requirement figure to approximately 5, 236.
15. I agree with the appellant that given the latest figures available it is appropriate to assess the 5 year period as 2016-2021. The appellant's evidence points out that in the Council's mid-Year review the total available supply for the period 2016-2021 is 5, 479. This would therefore exceed the requirement even with the 20% buffer. The appellant however suggests that a number of supply site figures should be deleted these include 300 units from the Land North of Horsham and a further 158 dwellings from neighbourhood plans should be discounted. This would reduce the supply figure to 5,021, which would not exceed the requirement plus a 20% buffer. Furthermore if one removes all of the windfall allowances, 250 over a 5 year period, the supply figure falls further below the 5 years plus a 20 % buffer, to 4,771 leaving a shortfall of 465 dwellings.
16. Whilst I return to the issue of windfall below for a more complete assessment and discussion, at this point I do not accept that it is appropriate to delete the windfall allowance.

17. The recent figures for housing completions have demonstrated an increasing supply of housing and more recently substantially in excess of the yearly requirement. This has been so for the past three years and is increasingly so. In effect this is a demonstration of the HDPF fulfilling its planned outcomes. The early years of shortfall can be ascribed to the retro-fitting of the requirement figure at a time when the plan was not yet adopted. Whilst historically there are periods of under supply particularly from 2007 to 12/13 this covered the period of the recession and poor economic conditions and at a time with a different development plan. I am of the view that the Council presently is not under supplying housing and therefore, whilst there may have been an historic under supply there is presently not; it cannot therefore be said the Council is presently persistently under providing, I am therefore of the view that a 5 % buffer would be more appropriate.
18. Given my conclusions above the Council would have a requirement plus a 5% buffer of approximately 4,582 dwellings. The supply side, minus those sites identified by the appellant of 458 dwellings, would give a supply of 5, 021 dwellings and therefore the Council can comfortably demonstrate a 5 year supply, even taking off all of the supply numbers identified by the appellant. On this basis policies for the supply of housing in the HDPF are up to date.

### **Main Issues**

19. Following on from above, and in the context of there being a five year housing land supply, the main issues in this appeal are:
- Whether the proposals comply with the spatial strategy set out in the HDPF, considering the extent to which policies for the supply of housing are up-to-date; and
  - The effect of the proposals on the character and appearance of the area, in particular having regard to the settlement separation in West Chiltington.

### **Reasons**

#### *Spatial Strategy*

20. Policy 2 in the HDPF sets out the Council's overall spatial strategy which, amongst other matters, is to focus development in and around the key settlement of Horsham and allow for growth in the rest of the district in accordance with the settlement hierarchy. Policy 3 allows for development within built up areas and sets out the settlement hierarchy and Policy 4 allows for settlement expansion through the allocation of sites in the Local Plan or neighbourhood plans and subject to other criteria. As paragraph 4.6 of the supporting text makes clear the HDPF seeks to ensure development takes place in a manner that ensures the settlement pattern and rural landscape character of the district is retained and enhanced. The intention is clearly expressed that the mechanism by which this will be achieved is through the designation of built-up area boundaries and the planned expansion of existing settlements through the Local Plan or Neighbourhood Planning.
21. Paragraph 4.8 further emphasises the strategy noting that the priority will be to locate appropriate development, including infilling, redevelopment and conversion within built-up area boundaries, with a focus on brownfield land. Paragraph 4.9 then directly addresses settlement expansion and is clear that

- this should be done through the allocation of sites in the Local Plan or Neighbourhood Plans.
22. Policy 15 then sets out the strategic housing provision that will be required across the plan period and the various sources from which this will be delivered. This includes amongst other matters the strategic sites; sites allocated through Neighbourhood Plans; and windfall developments. This housing provision policy is in effect an identification of numbers and sources not an allocation policy and development would need to come forward in accordance with the spatial strategy set out under policies 2, 3 and 4.
23. I see no conflict or tension between the policies and indeed the interpretation that the Council put forward that housing should come forward within the built-up areas or through allocated or strategic sites is a logical construction of the policies. Whilst Policy 15 includes an identification of windfall development as a source for the provision of housing it does not say how or where this should come forward and indeed the definition of windfall is a simple statement that any development not allocated would be treated as windfall. This does not provide it with any special policy position or added support, simply that there is a number of such developments that it is acknowledged will be forthcoming to meet the expected provision over the plan period.
24. Windfall developments are required to meet the spatial strategy requirements however, through the wording of policy 4, these would be precluded outside the built up areas as in such locations they would need to be identified in the Local Plan or a Neighbourhood Plan and therefore would fall outside the definition of windfall. Such an approach is wholly consistent with the proper interpretation of policy 4 as it is written and it is not for me to re-write the policy.
25. I do appreciate that with this interpretation that windfall development could only come forward in other circumstances, including within the built up area, under countryside Policy 26, under prior approval processes for agricultural conversions etc as explained in the Council's Five Year Housing Land Supply Statement at paragraphs 3.14 – 3.21. I do not accept that in this context the Policy 15 provision for 750 dwellings over the plan period, equating to 50 dwellings per annum, is significantly undermined. There are a number of settlements within the settlement hierarchy with settlement boundaries that could accommodate such development plus the authority has demonstrated a significant number of windfall developments historically. It is reasonable to conclude that the Policy 15 source of windfall developments could still be achieved with the aforementioned interrelationship in the policy position. I accept that there is no direct policy that appears to deal with windfall development per se and they may have made the situation clearer, but it is not a necessity to make the spatial strategy workable. In this regard I disagree with the Conclusions of my colleague on a previous appeal<sup>1</sup>, for the reasons given above.
26. The proposed development clearly sits outside the settlement boundary of West Chiltington Village and Common. The site is not allocated in the Local Plan or in a Neighbourhood Plan. The proposal therefore conflicts with policy 4 as it is outside the built-up area boundary and not an allocated site in one of the documents identified and is not supported by Policy 3, as this relates to

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<sup>1</sup> APP/Z3825/W/15/3022944

development within the built up area boundary. The proposal therefore conflicts with the spatial strategy outlined in Policy 2.

27. Policy 26 in the HDPF does allow for appropriate development in the countryside provided that it is essential to its countryside location and in addition can be seen to meet one of various criteria. A housing development of the nature proposed does not fit with any of the criteria identified and is not essential to its countryside location. The proposal would therefore also conflict with Policy 26.
28. For the reasons given above I conclude that the proposal would not comply with the spatial strategy set out in the HDPF, the proposal therefore conflicts with policy 2, 3 and 4 of the HDPF. As the Council can demonstrate a Five Year Housing Land Supply and the policies for the supply of housing are up to date in a recently adopted plan I give this conflict substantial weight. These conclusions would not be affected whether the scheme was for the original 19 dwellings or a reduced scheme for 14 dwellings.

#### *Character and appearance*

29. The statement of common ground makes it clear that the Council's concern in relation to this matter is focussed on the potential for the development to erode the settlement separation between the two parts of the West Chiltington settlement, West Chiltington Village and West Chiltington Common, and thus the Council contends it would conflict with Policy 25 of the HDPF.
30. The appropriate part of Policy 25 to which this matter relates is part 1 where the Council will support development proposals which protect, conserve and enhance the landscape and townscape character, taking into account areas identified as being of landscape importance, the individual settlement characteristics and maintains settlement separation. It is this final point that the Council highlighted to me as being key. The purpose of the policy, as stated in it, is to protect the natural environment and landscape character of the district from inappropriate development.
31. I was also directed to Policy 27, by the appellant, which sets out criteria for assessing developments between settlements and which is directed towards preventing settlement coalescence. On the face of it this appears to be a relevant policy in the consideration of this matter.
32. Policy 3, which identifies the settlement hierarchy includes West Chiltington Village and Common as a medium village in this hierarchy, but as one settlement. Whilst there are two distinct built-up area boundaries around the two areas, creating distinct physical elements in policy terms they are treated in the plan as one settlement. In that sense while it would appear that there may be development outside a built-up area boundary on the side of the village closest to the common and therefore in the gap between them, this is between two built-up area boundaries and not between two settlements. Had the policy meant to ensure separation between built-up area boundaries it should have sought to use the same terminology. In policy terms therefore I find that the proposal does not conflict with policy 27 which seeks to prevent the coalescence of settlements nor that part of policy 25 in respect of maintaining settlement separation as a matter of policy.

33. Whilst the proposal would be development outside the built-up area and not be in accordance with the spatial strategy as I have found above it does not directly conflict with the construction of these policies.
34. Development outside the built-up area not in accordance with policy 4 or policy 26 is still development in the Countryside. Whilst in the vicinity of the appeal site the built-up area boundary is irregular it has an obvious termination on this side of the road after Lavender Cottage. On the opposite side of the road there are large detached houses in substantial grounds providing for a dispersed and semi-rural character which is further emphasised by its edge of settlement location. In my view the appeal site has more relationship with the rural character outside the built-up area than the adjoining settlement. The field boundaries contain the site to some extent but this would also be true as a small residential estate and it would be isolated and not well integrated with the adjacent built up area. This would be true of any form of housing estate development on the site, whether that would be for 19 or 14 units.
35. The development of this site would add to the built development in the area and encroach into the countryside between the two parts of settlement. Whilst this may not be contrary to the wording of the policy referring to settlement separation it goes to the heart of the purpose of the policy. The encroachment and coalescence of these two distinct elements would alter the individual settlement characteristics of this settlement and which is a matter that is addressed in policy 25 and with which the proposal would conflict.
36. Whilst there may not be direct line of sight between the elements of the settlement at this point the cumulative erosion of the gap by small scale development would undermine the gap and any distinction between the separate elements to the detriment of the characteristics of the settlement.
37. For the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area, in particular having regard to the individual settlement characteristics, including the separation of the two built-up areas of West Chiltington. This would conflict with Policy 25 of the HDPF.

### **Other matters**

38. A number of benefits have been put forward by the appellant in support of the development. These are, it is contended, social and economic benefits associated with the provision of additional housing, including affordable housing, additional council tax receipts from increased population numbers, new homes bonus receipts and additional money circulating in the economy during the construction phase of the development. Whilst these are positive benefits the small number of new houses and additional benefits that would bring does not substantively weigh in favour of the scheme although I do add it to the positive benefits in my overall balance.
39. Concerns have been expressed by local residents about ecological impacts, including the effect on protect species. The application was supported by various documents including an extended phase 1 habitat survey and the information was assessed by the Council's advisor on these matters. No substantive issue were raised by the Council and it was noted that conditions could be imposed to address any identified issues. On the basis of the information before me I am satisfied that any such issues could be addressed

by the imposition of suitably worded conditions. I also note that there was no objection from Natural England to the proposals.

### **Overall Conclusions**

40. Paragraph 12 of the Framework makes it clear that the Framework does not change the statutory status of the Development Plan and advises that proposed development that conflicts with an up-to-date plan should be refused unless other material considerations indicate otherwise. Proposals are not sustainable development if they conflict with an up to date plan and there are no material considerations of sufficient weight, including the positive benefits of the scheme, to indicate the decision should be otherwise. I have identified that the scheme would conflict with the spatial strategy in the HDPF and would conflict with policies 2, 3, 4 25 and 26. The Development Plan is up-to-date and addresses the issues at the heart of this proposal. The conflict with the plan is therefore of significant weight and would result in development that would have a significant adverse environmental impact. On this basis the proposal would not be sustainable development and should not be supported.
41. For the reasons given above I conclude that the appeal should be dismissed.

*Kenneth Stone*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Graeme Keen	Barrister
Paul Collins MRTPI	Phoenix Planning Consultancy
Michael Stephens	Castle Land and Developments LLP

### FOR THE LOCAL PLANNING AUTHORITY:

Lesley Westphall	Senior Planning Officer Horsham District Council
Mike Eastham	Senior Planning Officer (Policy) Horsham District Council

### INTERESTED PERSONS:

Gary Constable	Local Resident
Allan Finley	Member of Public
Dr R F Smith	Council for the Protection of Rural England (Sussex)
Sharon Davis	Local Resident
Tina Cooper	Badger Trust West Sussex
Robert Gustar	Chairman West Chiltington Parish Council Planning Committee
Teena Fox	Local Resident
John Saville	Local Resident
Marshall Monks	Local Resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 List of suggested conditions and comments from the appellant submitted by the Council
- 2 The West Chiltington Parish Neighbourhood Plan 2015 – Pre-submission version submitted by Robert Gustar
- 3 Updated 5 year housing delivery and supply position statement by Paul Collins submitted by the appellant.
- 4 Latest housing completion data submitted by the Council.
- 5 Larger scale legible version of information in 4 above, submitted by Council.