



Appeal Decision

Site visit made on 18 April 2024

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th April 2024

Appeal Ref: APP/L3815/W/23/3323748

Land to the West of Blackboy Lane and North of Godwin Way, Fishbourne

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by William Lacey Group against the decision of Chichester District Council.
 - The application Ref is FB/22/02542/FUL.
 - The development proposed is the development of 4 no. new dwellings (3 no. 3-beds and 1 no. 2 beds) including the provision of a new vehicular access onto Blackboy Lane, a new pedestrian crossing on Blackboy Lane, parking, landscaping and all other associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have accepted a revised proposed site plan (reference A-003-P11) to supersede that on which the Council made its decision (A-003-P10), as the only change is the boundary line typography.
3. The Council consulted on the draft Chichester Local Plan 'Regulation 19' stage in early 2023. Following my site visit, the Council confirmed the intent to imminently submit this Local Plan to the Secretary of State for examination. I address the implications where relevant below.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - biodiversity.

Reasons

Character and Appearance

5. The site comprises an irregular shaped thickly wooded plot. It fronts Blackboy Lane, with paddocks and fields behind, and a paddock to the north with a row of dwellings beyond. The housing opposite the site forms a strong edge to the settlement, with dwellings then fronting both sides of Blackboy Lane to the south of the site. These are a variety of styles and ages, with those to the east generally being relatively large and 2 storey, and those to the west being traditional cottages or bungalows. Two cul-de-sacs of post-war bungalows also come off its western side, projecting into the surrounding fields and beyond the appeal site's rear boundary. The proposal is for 4 detached dwellings.

6. Twelve of the site's trees are covered by a Tree Protection Order (TPO), which indicates they were specifically identified as having a value deemed worthy of protection. Trees have many benefits, which I noted on my site visit includes their significant visual contribution to the site's clearly verdant character.
7. From vantage points along Blackboy Lane and travelling west along Clay Lane, this character strongly relates more to the paddocks and countryside, rather than to the built form of the village. When travelling east along Clay Lane, the site also acts to soften the transition to the built form of the village, predominantly due to the density of the trees as screening. Blackboy Lane overall has a generally semi-rural character, reinforced by the lack of pavements at its northern end, and its informal carriageway edging and verges.
8. The Council suggests that the proposal's layout would be overly dense, but I find it would not be untoward in the context of the surrounding pattern of development as a whole. This includes that it would somewhat replicate the cul-de-sac layout to its south. However, the extent of hardstanding and built form particularly around plots 1 and 2 from Blackboy Lane would be too urbanising a feature in this semi-rural context. Even with additional planting to that shown, this would not be sufficiently softened.
9. Furthermore, unit 1 would be set right against the eastern boundary onto the new stretch of pavement. This would align with the 2 dwellings immediately to the south, and with its front door onto the street mimicking the original arrangement of the adjacent cottage. However, those dwellings are more modest in form and detailing, and now present only side elevations to the road. In contrast, unit 1 would be higher, bulkier, and top heavy, resulting in undue prominence and juxtaposition. This would be exacerbated by its projecting first floor gable, creating a rather overbearing feature within the streetscene, together with the side first floor bay window.
10. Unit 3 would have a similarly prominent gable projection, and altogether the dwellings as a group would be top heavy and bulky. They would thus be disproportionate in the context of the other Blackboy Lane dwellings, and particularly the Godwin Way bungalows. They would be an urbanising form of development which would not blend in with the semi-rural character.
11. Three groups of trees plus 13 individual trees would be removed, and 1 group partially removed. This includes 8 trees protected by the TPO. All those to be removed would be category 'C' specimens, being young, semi-mature, or of small ultimate size. The Arboricultural Implications Report (the report') (2022) concludes that the proposal would not remove any trees which make a positive contribution to the existing green infrastructure. It also identifies that in any event, the ash tree would die in the next 5-10 years, and the 3 red horse chestnuts have defects that will limit either the future potential or overall aesthetic quality.
12. The report also suggests that those trees which constitute the main arboricultural features and which make the greatest contribution to character and appearance would be retained. However, even if this were so, this does not indicate that the others make no contribution, notwithstanding their condition as described above. The removal of individual trees may not be particularly noticeable in the context of their density across the site, but the removal of so many, and their replacement with substantial 2 storey built form would have a

cumulative and significant effect. This would be particularly so at close range on Blackboy Lane and in views from the north across the paddock, as well as from further away on Clay Lane.

13. Moreover, the report acknowledges that the Leyland Cypress group provides a dense visual screen, but suggests that this is inconsistent with the surrounding rural arboricultural character, on which the group could be considered to have a neutral or slightly negative impact. However, this group is highly visible from Clay Lane and Godwin Way, and in glimpses from Blackboy Lane, comprising some of the highest trees on the site and being on the boundary. While the species may not be typically associated with the countryside, it contributes particularly strongly to the verdancy of the site and the green edge of the village. Without such screening, the new dwellings would be particularly intrusive from the west, being taller than the bungalows which are relatively unobtrusive in long range views.
14. The appellant suggests that additional replacement planting could replace the overall loss, for which further details could be required via condition. I accept that the vegetation shown on the plans could be enhanced, but I am unconvinced that the layout would allow for planting which could provide sufficient screening in short or long range views. Therefore, the significant extent of tree removal and the associated introduction of built form would have a harmful impact on the character of the area. It would reduce existing screening, and read as the village's encroachment into the countryside.
15. Overall therefore, the proposed development would result in harm to the character and appearance of the area. It would conflict with the Chichester Local Plan Key Policies 2014-2029 (LP) (2015) Policies 33, 47, and 48, and the Fishbourne Neighbourhood Plan (2016) Policies D1 and ENV2. Together and amongst other matters, these require proposals to meet the highest standards of design, respect and enhance the character of the surrounding area and its setting in the landscape, be visually attractive through good architecture and appropriate landscaping, avoid apparent excessive bulk by careful design of roof elevations, and protect the loss of trees which bring amenity value to the surrounding area.
16. It would also conflict with the Framework paragraph 135 which requires developments to be visually attractive as a result of good architecture, layout, and appropriate and effective landscaping, and to be sympathetic to local character and history, including the surrounding built environment and landscape setting. It would further conflict with the Framework paragraphs 136 and 180(b) to retain existing trees wherever possible, and to recognise the intrinsic character and beauty of the countryside and of trees and woodland.
17. The Council's Interim Position Statement for the Delivery of Housing (IPSH) (2020) is also of relevance as a material consideration, being guidance to assist delivery of new housing outside of settlement boundaries. The appellant considers that I should give more weight to the IPSH than given by the Council, based on recent appeal decisions, one of which refers to it as carrying 'significant weight'¹. Although the proposal would comply with several of the IPSH criteria, I find it would conflict with criteria 4, 5, and 9. In combination, these require proposals to make best and most efficient use of the land whilst respecting the character and appearance of the settlement, with no adverse

¹ APP/L3815/W/23/3322020, Land North of Highgrove Farm, Bosham.

impact on the surrounding townscape and landscape character, and to be of high-quality design that respects and enhances the existing character of settlements.

Biodiversity

18. The biodiversity reason for refusal included that insufficient information had been provided on the reptile population of the site, together with any protection or management mitigation which may be required. The Council subsequently confirmed that a suitable mitigation strategy was detailed in the Reptile Survey Report (May 2023), which could be adequately secured via a planning condition. The Council therefore considers that this matter has been suitably addressed, and on the evidence before me, I see no reason to find differently.
19. The LP Policy 49 requires safeguarding of the site's biodiversity value, and the Framework paragraphs 180 and 186 require avoidance or compensation for significant harm to biodiversity, and a biodiversity net gain. The proposal would cause a net loss of habitat including a net loss in medium distinctiveness habitats, and the parties therefore agree that off-site biodiversity mitigation would be necessary.
20. The appellant considers that as off-site mitigation schemes are scarce or in their infancy, the imposition of a broad planning condition would enable mitigation to be appropriately secured. This would allow discussions with scheme providers to continue, and also enable the Council to ensure that the proposed scheme is being delivered by a reputable organisation. It could also allow for the purchase of credits through the Government's credit purchase scheme when released. The appellant's suggested condition would therefore restrict commencement of the development until details of a scheme to secure off-site biodiversity net gain were approved in writing by the Local Planning Authority, and those approved details then implemented within an agreed timeframe.
21. In assessing this condition against the 6 policy tests at paragraph 56 of the Framework and in the PPG, I find that it would be necessary, relevant to planning, relevant to the development to be permitted, enforceable, and sufficiently precise. However, it would not also be 'reasonable in all other respects'. This is because based on the limited evidence before me, the location and type of habitat which could be provided and appropriately secured is highly uncertain. I am therefore unconvinced of the likelihood that a site would be found which could accommodate and deliver appropriate biodiversity gain in a timely fashion. This indicates high uncertainty over the ability to discharge the condition, which is therefore likely to result in an unimplementable permission. This would thus be unreasonable.
22. Overall therefore, the proposed development would result in harm to biodiversity, and so would conflict with the LP Policy 49, and the Framework paragraphs 180 and 186.

Other Matters

23. The site lies near to the Chichester and Langstone Harbours Special Protection Area (SPA), identified as a 'Habitats Site'. This is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Permission may only be granted after having ascertained

that the proposed development would not affect the integrity of this, or any other, protected site. This approach is reinforced by development plan policies.

24. New residential development within Fishbourne has been identified to result in increased recreational disturbance on Habitats Sites, with an in-combination effect resulting in an adverse effect on their integrity. The appeal proposal is also likely to cause harmful effects from the nutrient content of its wastewater discharge, for which mitigation would be required. The appellant has provided a Unilateral Undertaking (UU) to this effect for recreational disturbance, and suggests a condition preventing implementation of the development until suitable nitrate mitigation has been secured.
25. Had I been minded to allow the appeal, it would have been necessary for me to consider these matters within an Appropriate Assessment. However, I am dismissing the appeal on other grounds, and the outcome of this would not be determinative. I therefore do not need to consider further the implications of the Habitats Regulations, and whether the proposal would adequately mitigate its effect on the integrity of the protected sites.
26. The Council's evidence for the draft Local Plan identifies that new housing development is likely have an unacceptable cumulative impact on strategic and local road safety and function. All new housing development should therefore contribute towards identified highway improvements to provide long term mitigation. The appellant's UU thus includes a financial contribution of £30,912 as a highway network contribution, which accords with the Council's requested per dwelling figure. I note the Council's position that the monitoring fee for the overall UU is too low due to necessary indexation, whereas the appellant considers this difference is only a minor sum and so this is 'splitting hairs'.
27. However, as the principle of how to provide highway network mitigation has now been agreed between the parties, it is no longer a significant contested issue. Again, as I am dismissing the appeal on other grounds, I therefore do not need to conclude in detail the appropriateness of this UU contribution.

Planning Balance

28. The Council advises that it has a housing land supply of 4.72 years identified through recent appeals, and a most recently published assessment from December 2022 showing 4.74 years of housing supply. Copies of these appeals were not provided, but the appellant has not suggested an alternative figure. There is therefore nothing before me to suggest otherwise than that the Council has at least 4 years of housing land supply. The draft Local Plan has reached Regulation 19 stage, whereby only a 4 year housing supply needs to be demonstrated under the provisions of the Framework paragraph 226.
29. However, the Council has advised that the LP Policies 2, 5, and 45 are out of date in terms of the supply of new housing, because the settlement boundaries have not been reviewed, and there is a shortfall of allocated sites to meet the identified housing need under the guidance in the Framework paragraph 61. If policies which are most important for determining the proposal are out-of-date, then the Framework paragraph 11d) falls to be considered. This indicates that permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

30. While I have not found direct conflict with these policies, in that they are not the most important for determining this appeal, they do relate to the provision of new housing outside of settlements. The site lies outside of but directly adjacent to the Fishbourne settlement boundary. Therefore, in order to address any doubt in this matter, I have given additional weight to the benefits of the proposal on the basis, and have assessed the proposal against the provisions of paragraph 11d).
31. The Framework seeks to significantly boost the supply of homes, with paragraphs 123 and 124 providing support for the development of windfall sites and the effective use of land. Additional housing is therefore a clear benefit of the proposal. The dwellings would also have 2 or 3 bedrooms, which the appellant identifies as being in greatest need in the District. However, 4 dwellings would only be a relatively small-scale contribution to the housing supply, which attracts moderate weight. There would also be small social and economic benefits from construction, and from the local expenditure, demand for services, and tax revenue by the additional residents. These benefits would be small-scale overall, but again I give them moderate weight.
32. The proposal would include a pedestrian crossing, but this would be necessary primarily for the safety of the site's future occupants and visitors, and as such would be mitigation rather than a benefit. It may also slightly reduce traffic speed along this stretch, a benefit to which I give minor weight. Infrastructure provided through the financial contributions would benefit the wider community, but again is required as mitigation for the pressure on such from the new residents, and therefore I find this to be a neutral matter.
33. The proposal would have a significantly harmful effect on the character and appearance of the area, and on the site's biodiversity. I give this harm significant weight. I further identified in my reasoning above the conflicts with the Framework resulting from this harm.
34. I therefore find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits in this case, when assessed against the policies of the Framework as a whole. Accordingly, the proposal does not benefit from the presumption in favour of sustainable development as a material consideration outlined at paragraph 11 of the Framework.

Conclusion

35. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR