



## Appeal Decision

Site visit made on 11 January 2022

**by David Prentis BA BPI MRTPI**

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

**Decision date: 7<sup>th</sup> February 2022**

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**Appeal Ref: APP/Z3825/W/21/3278760**

**Brangwyn, Station Road, Henfield, West Sussex BN5 9UP**

- 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 Seet Gurprashad and Mrs Patti Gurprashad against the decision of Horsham District Council.
  - The application Ref DC/20/2200, dated 19 November 2020, was refused by notice dated 17 February 2021.
  - The development proposed is demolition of existing shop and dwelling and construction of ten new one-bedroom apartments with parking forecourt and ten domestic storage buildings to rear with associated bicycle parking and refuse storage.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. In September 2021 Natural England (NE) published advice in a document entitled *Natural England's Position Statement for Applications within the Sussex North Water Supply Zone (NEPS)*. NE advises that it cannot be concluded that existing abstraction of groundwater within the zone is not having an adverse impact on the integrity of the following designated sites:
  - Arun Valley Special Area of Conservation (SAC)
  - Arun Valley Special Protection Area (SPA)
  - Arun Valley Ramsar Site
3. I refer to these designations collectively as the Arun Valley protected sites. NEPS states that developments in the zone must not add to the impact on the Arun Valley protected sites. One way of achieving this would be to demonstrate water neutrality. NEPS was published after the Council had determined the appeal application, so these matters were not considered in the officer's report, nor do they feature in the reasons for refusal. Nevertheless, as an appeal has been made, I now have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) to consider the effect of the proposal on the Arun Valley protected sites. Accordingly, I allowed the appellants an additional period, outside the normal timetable for written representations appeals, to comment on this matter.
4. The development plan includes the Horsham District Planning Framework 2015 (HDPF) and the Henfield Neighbourhood Plan 2021 (HNP).

## **Main issues**

5. The main issues are:

- the effect of the proposal on the availability of employment sites;
- whether the proposal would make an appropriate contribution to the range of unit sizes required to meet housing needs;
- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on the Arun Valley protected sites.

## **Reasons**

### *Effect on the availability of employment sites*

6. The appeal site comprises a shop unit with residential accommodation on the upper floors. Station Road is well away from the main shopping area of Henfield and the unit previously operated as a neighbourhood store, selling food and newspapers, within a mainly residential area. The shop was run by the appellants for many years but closed during the pandemic.
7. HDPF Policy 13 states that proposals for small scale changes of use from retail to residential must demonstrate that the retail unit is no longer viable. The shop is an employment use, although it is not in a Key Employment Area. Policy 9 states that redevelopment of employment premises must demonstrate that the site/premises is no longer needed and/or viable for employment use. HNP Policy P3.2.2 has similar objectives.
8. The appellants submitted a financial statement with the application. This states that there was modest commercial activity in earlier years which then dropped off in the past few years. There was a turnover of £35,000 in 2017/18. The turnover was similar in 2018/19 although the business made a loss in that year. It is stated that the appellants would have had very little income if they had not been in receipt of income from another source.
9. The Council considers that there is insufficient information to show that the shop is not viable. In particular, it is argued that there has been no marketing of the premises. However, the policies do not stipulate any particular way of presenting information on viability. In my view it is necessary to take a pragmatic and proportionate approach. This is a small unit that is remote from other retail or commercial activity. Having regard to the reported turnover, I have no reason to doubt that the shop only kept going as long as it did because the proprietors had other income. I consider that the appellants have shown that the premises are no longer viable for retail use. The Council has not suggested any other employment uses that might be viable here.
10. I conclude that the proposal would not be harmful to the availability of employment sites in the district. It would accord with HDPF Policies 9 and 13 and with HNP Policy P3.2.2.

### *Contribution to the range of units required to meet housing needs*

11. HDPF Policy 16 states that development should provide a mix of housing sizes, types and tenures to meet the needs of the district's communities, as

evidenced in the latest Strategic Housing Market Assessment (SHMA), in order to create sustainable and balanced communities. The appeal scheme would provide ten one-bedroom units, all of which would be market housing. The most recent SHMA (2019) recommends that the mix of housing on new market developments should be 5% one-bedroom, 30% two-bedroom, 40% three-bedroom and 25% four-bedroom. However, the mix is to be achieved across the district and the Council does not suggest that it should be replicated on each and every site. Policy 16 allows for the appropriate mix on any particular site to be determined by the character and density of the neighbourhood.

12. Housing mix has also been considered in the HNP. The Henfield Housing Needs Assessment (2017) identified that there was a strong indication that one and two-bedroom units are needed to address increasing numbers of single person, elderly and newly forming households. The HNP includes an objective of providing more smaller housing units, of two or three bedrooms, appropriate for young families and the elderly.
13. Notwithstanding the reference to affordable housing in Policy 16, the Council has not raised any objection to the fact that this would be a wholly market housing scheme. Nor does the Council object to a flatted scheme. The Council's position is that a scheme including both one-bedroom and two-bedroom units would better meet housing needs. Henfield Parish Council, on the other hand, supports the provision of one-bedroom units on the appeal site. Its representation states that the HNP is seeking to discourage developers from only building five-bedroom dwellings. The Parish Council considers that there is a need for one-bedroom and two-bedroom units.
14. I attach significant weight to the Henfield Housing Needs Assessment, which provides a more localised focus than the SHMA. I also attach significant weight to the support from the Parish Council, which can be expected to have a local perspective on what would meet housing needs in Henfield. All parties agree that there is a need for one-bedroom units, which the appeal scheme would help to address. That would be a significant benefit of the scheme which, to my mind, would not be outweighed by the lack of some two-bedroom units.
15. I conclude that the proposal would make a positive contribution to the mix of housing types required to meet housing needs by providing small units for which a particular need has been identified in Henfield. It would accord with Policy 16.

#### *Character and appearance*

16. This part of Henfield is mainly residential in character, although there are some commercial buildings a little to the south of the appeal site and views up Station Road are terminated by the Railway Tavern public house. There are no buildings fronting the western side of the street, which is bounded by side and rear garden fencing. The road slopes down from north to south and the buildings on the eastern side step down to follow the fall of the land.
17. There is no strongly defined architectural style to the street scene. The buildings are mainly of two storeys, although some of the roof spaces have been converted. The buildings are set back from the road to the same (or a similar) building line. There is a fairly continuous built frontage, with the main gaps being the side garden to the appeal property itself and an extensive area of hard-standing in front of a commercial building. Facing materials are mainly

red brick with tiled roofs, although render finishes and slate roofs are also seen. Parking is generally in front of the building line, accessed directly from the street.

18. The scheme is designed as two matching buildings, arranged in a symmetrical composition and linked by a common stairwell. The stairwell would be set well back from the front elevation, such that the development would appear as two buildings from most angles. The buildings would respect the established building line. The right hand building, as seen from the street, would be set at a lower level so that the buildings would step down the slope as other buildings in the frontage do.
19. The facades would have projecting bays, providing vertical emphasis and reflecting traditional domestic architectural styles. Each would have one two storey bay and one three storey bay. The taller bays, which would have gables, would provide focal points. The second floor windows would break the eaves line and further visual interest would be provided by variation in building materials and a central balcony on each building. I consider that these features of the design would, together, serve to articulate the mass of the buildings in a way that would create a coherent identity for the development whilst respecting the site context.
20. The Council does not object to the architectural expression of the appeal scheme. Its main concern is that three storey development would be out of character. I do not share that view. The design has made use of the ground levels, such that the eaves line and ridge of the left hand building would be similar to the adjoining house. Whilst the eaves of the right hand building would step up from the adjoining house on this side, this would not look out of place in a street scene that is characterised by changes in levels. The gabled bays would be the tallest elements of the facade. These would be close to the centre of the site, furthest from the adjoining houses. The proposed buildings would have three levels of accommodation at the front but only two at the back, thereby presenting a two storey elevation to the rear.
21. The Council argues that the use of render as a facing material would be uncharacteristic. However, as noted above, render is a facing material that is found in the locality. In any event, the final choice of facing materials could be controlled by a condition so this is not a fundamental objection to the design. An interested party has concerns about the appearance of the parking. The proposed parking layout, with bays accessed from the street, would be an arrangement that is common in Station Road.
22. My overall assessment is that the design would make a positive contribution to the street scene. There would be no harm to the character and appearance of the area. The proposal would accord with HDPF Policy 33, which seeks to make effective use of previously developed land whilst maintaining a high standard of design and ensuring that development relates sympathetically with its surroundings. It would also accord with HNP Policy 12 which seeks a high quality of design that reflects the character and scale of the street scene.

*The Arun Valley protected sites*

23. As noted above, NEPS states that it cannot be concluded that existing abstraction of groundwater within the Sussex North Water Supply Zone is not having an adverse impact on the integrity of the Arun Valley protected sites.

Consequently, any developments in the zone must demonstrate that they would not add to the impact. One way of achieving this would be to demonstrate water neutrality. NE is seeking to work with affected authorities with a view to promoting a strategic solution, whereby individual applicants could contribute to a collective approach to achieving water neutrality. Until such time as that collective approach is in place, the interim approach is to allow individual applicants to seek to demonstrate water neutrality through a combination of minimising water use in new development and offsetting water consumption by reducing water use elsewhere.

24. The Council has drawn attention to an appeal decision<sup>1</sup> which considered impacts on SPAs around the Solent. That decision is an example of a similar procedural matter, in that concerns relating to the SPAs appear to have emerged after the appeal had been submitted. Nevertheless, the Inspector considered the appeal in the light of his duties under the Habitats Regulations, as I shall do in this case.
25. Notwithstanding that there is no reason for refusal relating to these matters, I now have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) to consider the effect of the proposal on the Arun Valley protected sites. The appeal scheme would result in a net increase of nine dwellings, thereby increasing the demand for water. Having regard to NEPS, I cannot exclude the possibility that the appeal scheme, either alone or in combination with other plans and projects, could add to the impact on the protected sites.
26. Consequently, I would not be able to grant planning permission unless I had first carried out an appropriate assessment to consider the effect of the proposal on the integrity of the protected sites, having regard to their conservation objectives. Such an assessment could take into account any mitigation measures that might be put forward.
27. As noted above, I allowed the appellants an additional period to comment on this matter. They provided a statement on water neutrality, which takes account of a recent planning permission for two additional dwellings at the appeal site. The statement assumes that scheme to be a baseline and compares its likely water use with the appeal proposal. The calculations assume that water consumption for the appeal scheme could be reduced by a combination of rainwater harvesting and grey water recycling. On that basis, it is concluded that the appeal scheme could achieve water neutrality.
28. Whilst I have taken the statement into account, the information before me falls far short of what would be required for an appropriate assessment. Planning Practice Guidance states that an appropriate assessment must contain complete and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed project.
29. However, other than the NEPS itself, I have no information about the location and extent of the protected sites, their respective qualifying features, their conservation objectives or the impact pathways by which the appeal scheme could affect them.

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<sup>1</sup> APP/Z1775/W/19/3227030 – Wisborough Road, Southsea

30. Moreover, to reach the level of certainty required in an appropriate assessment, the inputs to the calculations would need to be supported by more evidence than is currently available. For example, such evidence might cover (in greater detail) the occupancy levels and water demand statistics that have been assumed and the certainty of achieving the quoted levels of rainwater and grey water use.
31. The NEPS advises that an interim approach to demonstrating water neutrality would include minimising water use and water offsetting, by reducing water use elsewhere. The proposed mitigation would only cover minimising water use on site. Whilst there may perhaps be cases where it is possible to demonstrate water neutrality through minimising water use alone, I cannot reach that conclusion with certainty in this case.
32. In conclusion, I cannot exclude the possibility that the proposal would adversely affect the integrity of the Arun Valley protected sites, either alone or in combination with other plans and projects. It is possible that a degree of mitigation, in terms of minimising water use, could be secured by conditions. However, there is currently no evidence before me as to how water offsetting could be delivered. NE advises that both elements are needed to demonstrate water neutrality.
33. In any event, the information before me falls far short of what would be required for an appropriate assessment to be carried out. Planning permission cannot be granted for development that may harm the protected sites without an appropriate assessment first being undertaken. I conclude that the proposal would be contrary to HDPF Policy 31 because there would be an unacceptable risk of harm to the Arun Valley protected sites.

### **Other matters**

34. The Council's fourth reason for refusal refers to "*overdevelopment*". However, the only alleged harm that has been identified relates to parking and the access route to the cycle/bin stores. The highway authority has not raised any objection in terms of either the amount or the layout of the proposed parking and has advised that the proposal is acceptable in highway safety and capacity terms. I note that some on-street parking spaces in the locality may be used by visitors to the nearby Downs Link footpath, particularly at weekends. Even so, I consider that the proposed level of parking is appropriate for a flatted scheme in a reasonably accessible location.
35. Each flat would have an individual store for cycles and bins, located at the rear of the site. Whilst neighbouring residents have raised concerns about this arrangement, given that the bin stores would be fully enclosed, I do not think that it would cause harm in terms of odours or other amenity impacts. The proposed parking layout could cause problems in manoeuvring cycles and bins from the stores to the street. However, the parking bay widths are quite generous and I think that the forecourt layout could be adjusted to provide a better route. Had I been minded to allow the appeal, I would have sought the views of the parties on whether or not this was a matter that could have been covered by a condition.
36. I consider that the proposal would accord with HDPF Policies 33, 40 and 41 and HNP Policy P4.4, insofar as these policies deal with vehicle/cycle parking and arrangements for refuse storage.



37. The Council's fifth reason for refusal concerns noise from air source heat pumps. This objection has been overtaken by events in that it is now proposed to use ground source heat pumps.
38. Interested parties raised a number of objections which were mainly on matters that have been discussed above. Neighbouring residents have also raised concerns about overlooking. Flank windows in the proposed buildings would serve bathrooms and could be fitted with obscure glazing. This could be controlled by a condition. There would be some potential for overlooking of gardens from the first floor rear windows and balconies. However, the balconies would be small in size and contained between projecting bays. Any overlooking from windows would be at an oblique angle and no more than is typically experienced in an urban area such as this. It would not be so significant as to be harmful to living conditions.

### **Conclusion**

39. For the reasons given above, I conclude that the proposal would accord with development plan policies relating to retail/employment sites, housing mix, the character and appearance of the area, vehicle/cycle parking and refuse storage. Nevertheless, the proposal would be contrary to HDPF Policy 31 because there would be an unacceptable risk of harm to the Arun Valley protected sites.
40. Overall, I attach greatest weight to the policy which seeks to protect international and national protected sites because of the importance of those sites for nature conservation. The proposals should be regarded as being in conflict with the development plan as a whole, notwithstanding the matters where I have identified policy compliance.
41. The proposal would make more effective use of a previously developed site within the built up area of Henfield. Moreover, it would make a positive contribution to the supply of small units in Henfield, for which a particular need has been identified. However, these factors are not sufficient to indicate a decision other than in accordance with the development plan. The appeal should therefore be dismissed.

*David Prentis*

Inspector