



## Appeal Decisions

Site visit made on 10 October 2023

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

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

**Decision date: 30<sup>th</sup> October 2023**

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### **Appeal A: APP/L3815/W/22/3298478**

#### **Land North of Sturt Avenue, Haslemere, West Sussex GU27 3SJ**

- 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 Kevin Soobadoo of Casa Coevo Group Limited against the decision of Chichester District Council.
  - The application Ref LM/21/02428/FUL, dated 23 July 2021, was refused by notice dated 18 February 2022.
  - The development proposed is 9 dwellinghouses together with associated access, infrastructure, parking, and landscaping.
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### **Appeal B: APP/L3815/W/23/3318265**

#### **Land north of Sturt Avenue, Haslemere, West Sussex GU27 3SJ**

- 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 Kevin Soobadoo against the decision of Chichester District Council.
  - The application Ref LM/22/01593/FUL, dated 21 June 2022, was refused by notice dated 16 February 2023.
  - The development proposed is a new bridge access.
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### **Appeal C: APP/R3650/W/23/3318221**

#### **Land north of Sturt Avenue, Haslemere, West Sussex GU27 3SJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Kevin Soobadoo against Waverley Borough Council.
  - The application Ref WA/2022/02242, is dated 21 June 2022.
  - The development proposed is a new bridge access.
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## **Decisions**

### *Appeal A*

1. The appeal is dismissed.

### *Appeal B*

2. The appeal is allowed, and planning permission is granted for a new bridge access, at Land north of Sturt Avenue, Haslemere, West Sussex GU27 3SJ, in accordance with the terms of the application Ref LM/22/01593/FUL, dated 21 June 2022, subject to the conditions set out in the schedule at the end of this decision.

### *Appeal C*

3. The appeal is allowed, and planning permission is granted for a new bridge access, at Land north of Sturt Avenue, Haslemere, West Sussex GU27 3SJ in accordance with the terms of the application Ref WA/2022/02242, dated 21 June 2022, subject to the conditions set out in the schedule at the end of this decision.

### **Preliminary Matters**

4. This decision relates to 3 appeals which essentially concern the same site, albeit the site boundaries are extended in relation to Appeals B and C to include the whole of the access route. The scheme subject of Appeal A is a housing development, whilst Appeals B and C concern the bridge that would provide access. Though the bridge is also shown on the plans subject of Appeal A it partly falls outside the site boundary for that application.
5. As the bridge would straddle the boundaries of 2 local planning authorities, Appeals B and C concern identical proposals submitted to each. In this regard Appeals A and B relate to land under the jurisdiction of Chichester District Council (CDC), and Appeal C relates to land under the jurisdiction of Waverley Borough Council (WBC).
6. CDC refused the application subject of Appeal B, whilst WBC failed to determine the application subject of Appeal C. WBC did however produce a draft officer report which recommended approval. At appeal CDC has taken the role of Lead Authority in relation to Appeals B and C. Its appeal statement however focuses on Appeal B and makes no attempt to reconcile its view with that of WBC. Appeal C is therefore in effect uncontested by WBC.
7. Appeal A was partly refused on the basis that the appellant had: (a) failed to demonstrate that the development could access fresh water; (b) failed to provide an invasive species management plan; (c) failed to provide adequate details of on-site mitigation concerning trees and wildlife; (d) failed to provide adequate information in relation to the scheme's potential impact on a Source Protection Zone; and (e) failed to secure a financial contribution in respect of affordable housing. Following receipt of further information, CDC has withdrawn its objections on grounds (a) and (b) and indicated that its objections on grounds (c) and (d) can be resolved by condition. CDC has additionally confirmed that a Unilateral Undertaking (UU) submitted with the appeal addresses its objection on ground (e).
8. Appeal B was partly refused on the basis that insufficient information had been submitted in relation to effects on biodiversity. Again, following the provision of further information CDC has removed its objection.
9. I shall consider the above matters below only to the extent that they remain relevant.

### **Main Issues**

10. The main issues are:
  - whether the site is a suitable location for the proposed developments in relation to flood risk;
  - the effects of the proposed developments on biodiversity;

- the effect of the proposed developments on the character and appearance of the area; and
- whether the scheme subject of Appeal A would provide an appropriate mix of dwellings.

## **Reasons**

### *Flood risk*

#### *(a) Appeal A*

11. The eastern boundary of the site is located adjacent to the River Wey. Though most of the site falls within Flood Zone 1, a small part of the site adjacent to the river falls within Flood Zones 2 and 3.
12. The identified risk of surface water flooding adjacent to the River Wey is low. Land within the site is however prone to waterlogging. This was apparent on my visit and has been illustrated by photos submitted by interested parties. The matter has also been flagged by the Environment Agency (EA) who suggest that this may indicate a high water table and susceptibility to groundwater emergence. The appellant has otherwise identified ground conditions and drainage as causes. Groundwater therefore appears to exist as an additional source of potential flooding.
13. In the above circumstances the National Planning Policy Framework (the Framework) and Planning Practice Guidance set out the requirement for application of the sequential test. The objective of this is to steer new development to areas at the lowest risk of flooding from any source. It is indeed contrary to the broader objective of sustainable development to develop within locations susceptible to flooding where alternatives exist.
14. The sequential test has not been applied. The appellant has instead sought to demonstrate that the ground floor of dwellings would be raised, areas identified within Flood Zone 3 would be located outside plot boundaries, and drainage would be improved. However, these considerations are not directly relevant to the sequential test, whose concern is with site selection, and thus with the existing baseline. As set out in the PPG, even where a flood risk assessment shows that a development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. In its absence the appellant has failed to demonstrate that the site is a sequentially suitable location for the development subject of Appeal A.

#### *(b) Appeals B and C*

15. The proposed bridge would be a replacement of the existing ramshackle structure which provides access to the site. It would clearly form an integral part of the overall housing scheme. In this regard, as both are shown on the plans subject of Appeal A, my findings in relation to Appeal A above necessarily encompass the bridge. Given that the bridge has however also been presented in isolation within the applications subject of Appeals B and C, it also falls to be assessed separately.
16. As a replacement of the structure providing sole means of access to the site, the proposed bridge could not be located elsewhere. The EA has furthermore provided a positive response to its design in relation to flood risk. This would

represent an improvement over the existing structure. Consequently, the proposed bridge has drawn no objection from either Council. I see no reason to reach a different view.

*(c) Conclusion*

17. For the reasons set out above I conclude that the appellant has failed to demonstrate that the site is a suitable location for the development subject of Appeal A on grounds of flood risk. The development would therefore conflict with Policy 42 of the Chichester Local Plan: Key Policies 2014-2029 (the CLP) which supports the application of national policy.

*Biodiversity*

*(a) Appeal A*

18. An Ecological Impact Assessment dated November 2021 (the 2021 report) was submitted with the appeal. This identified that the development would result in an overall loss of biodiversity, and that this would require off site mitigation. Insofar as further reference has been made to enhancement and 'net gain', this would also need to be delivered off site.
19. A potential site has been identified for mitigation and enhancement. However, its use has not been secured, and the required measures have not been specified. Uncertainty thus exists over its future availability, whilst separate questions have been raised over its suitability. Exactly how and where mitigation and enhancement would be delivered therefore remains unclear.
20. A condition requiring a legal agreement has been proposed by the appellant. The PPG however states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Whilst this may nonetheless be acceptable in exceptional circumstances, none have been demonstrated. The scheme subject of Appeal A would therefore result in a net loss of biodiversity.

*(b) Appeals B and C*

21. The 2021 report was submitted with the applications subject of Appeals B and C, but a revised version dated August 2022 (the 2022 report) was submitted with the related appeals. This provides greater focus on the bridge. Given that the 2021 and 2022 reports overlap it is not entirely clear how their findings interact. This is particularly true insofar as the 2021 report has not been updated to take account of the 2022 report.
22. As was the case with regard to flood risk, my findings in relation to Appeal A encompass the bridge. However, insofar as Appeals B and C present the bridge in isolation, the 2022 report demonstrates that mitigation could be achieved on site. As proposed by CDC, conditions could additionally be applied in relation to potential pollution.

*(c) Conclusion*

23. For the reasons set out above I conclude that the development subject of Appeal A would have an adverse effect on biodiversity. It would therefore conflict with Policy 49 of the CLP, which, whilst providing scope for adverse effects on biodiversity to be outweighed by benefits, still requires mitigation;

and Policy 52 of the CLP, which sets out the expectation that developments will protect and enhance existing green infrastructure and mitigate harm.

#### *Character and appearance*

24. Policy 45 of the CLP and Policy RE1 of the Waverley Borough Local Plan Part 1 2018 (the WLP) each designate the site on either side of the Council boundary as 'countryside'. Policy 45 is more restrictive than Policy RE1, but it nonetheless provides scope for development immediately adjacent to an existing settlement, which is applicable in this case.
25. The site otherwise falls within an area largely characterised by suburban housing, and its immediate setting includes housing, an elevated road and a pumping station. Though the site and some adjoining land is largely covered by trees, shrubs and other plants, there is little sense that it occupies a countryside or rural location, or a site of transitional character.
26. The site is partly located to the rear of existing dwellings on Sturt Avenue. These are street fronting and mostly consist of early C20th designs. Housing within the broader area is however of mixed age and style, and the layout includes cul-de-sacs which appear to have been partly constructed on 'backland' sites. That being so, the provision of a cul-de-sac development accessed off an existing track would not be incongruous. Nor would the distinctive contemporary styling proposed. In this regard the various aspects of the proposed architectural design with which CDC has found fault are essentially stylistic. Similar is applicable to concerns expressed over scale, mass and bulk, which appear to be more directly related to the rectilinear flat roofed designs proposed than to the amount of built form. The development would otherwise be very well contained and not clearly visible within the broader streetscene. Conditions could be imposed to secure more specific details of finishes.
27. The overall density of development would fall within the range which exists locally. In this regard the proposed layout has responded to constraints imposed by trees, which would remain a dominant feature of the site despite some felling. Though it is apparent that some overbearing and shading of outdoor amenity space by trees would occur, it does not necessarily follow that this space would be 'low quality'.
28. The positioning of studios/garaging forward of the main frontage of some of the proposed dwellings represents an awkward feature of the design. However, this would cause no unacceptable harm.
29. Considered within the context of the broader scheme subject of Appeal A, and given my findings above, the bridge would not appear in any way incongruous. This would be somewhat less true if the bridge was to be constructed in isolation. Nonetheless, in the unlikely event that it was it would be primarily viewed in relation to the existing track and pumping station, in relation to which it would cause no unacceptable harm.
30. For the reasons outlined above I conclude that the developments subject of Appeals A, B and C would have an acceptable effect on the character and appearance of the area. The developments subject of Appeals A and B would not therefore conflict with Policy 45 of the CLP as set out above; Policies 25 and 48 of the CLP, which largely concern landscape character; or Policy 33 of

the CLP, insofar as this seeks to secure the highest standards of design, including in relation to local character. Whilst CDC additionally cited Policy 52 of the CLP, its relevance is more specifically to the matter of biodiversity, as considered above. As was established within the draft officer report provided by WDC, the development subject of Appeal C would not give rise to conflict with the WLP.

### *Housing*

31. CDC partly refused planning permission on the basis that the housing mix would not be in line with the Chichester Housing and Economic Development Needs Assessment 2018 (HEDNA). The HEDNA does not however form part of the development plan, and indeed postdates adoption of the CLP. The HEDNA's introduction otherwise makes clear that it is an evidence document, and recommendations in relation to housing mix are presented as suggestions.
32. Though the Council has failed to direct me to any adopted policy which requires the mix of market housing to be in line with the HEDNA, the latter appears to have some relevance in relation to Policy 33 of the CLP. This is insofar as Policy 33 refers to the need to provide an 'appropriate' mix of dwellings.
33. Provision of a development containing a single size of dwelling would not reflect the averaged broader needs of the district as set out in the HEDNA. That is not to say however that the proposed mix would therefore fail to meet the housing needs of the district, or that it would therefore be inappropriate. In this case CDC has indeed failed to demonstrate why the provision of a small development of 4-bed dwellings would be inappropriate having regard to the specific context.
34. I appreciate that paragraph 62 of the Framework states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. However, I have not been directed to any adopted policy which directly addresses the matter.
35. For the reasons set out above I conclude that the scheme subject of Appeal A would provide an appropriate mix of dwellings. It would therefore comply with Policy 33 of the CLP as set out above.

### **Other Matters and Considerations**

36. The scheme subject of Appeal A would conflict with the CDC's development plan taken as a whole. As CDC lacks a demonstrable 5-year supply of deliverable housing sites (5YHLS), the policies most important for determining the application are deemed 'out-of-date'. Even so, to the extent that the policies with which I have identified a conflict address flood risk and biodiversity, I am satisfied that they broadly reflect similar considerations set out within the Framework. When assessed against the Framework itself, my findings in relation to the flood risk otherwise provide a clear reason for refusing planning permission.
37. The development would provide 9 open market dwellings and funding towards the provision of off-site affordable housing. Whatever the current shortfall in 5YHLS, in each regard the contribution towards addressing the need for each type of housing would be limited. Even if I was to attach significant weight to the related social and economic benefits, they would not outweigh the harm I have identified above.



38. Allocation of the site for housing has been considered in the past. It remains the case however that it was not allocated, partly on account of unresolved issues in relation to flooding. This matter thus has little bearing on my findings in relation to Appeal A above.
39. As established above, it is unlikely that the bridge subject of Appeals B and C will be constructed in isolation. However, this does not alter its acceptability.

### **Conditions**

40. Each Council has provided a list of conditions. Those related to Appeal C are provided within the draft officer report. The lists don't match but some of the conditions cover common themes. Whilst it is clearly necessary for the conditions to be duplicated, the extent to which the subject matter will be applicable will depend upon the extent to which the site falls within the boundaries of CDC or WDC. Cross boundary cooperation would therefore be required in terms of the discharge and enforcement conditions.
41. A range of conditions have been suggested relating to ecological mitigation, management and methodology. Most can be collectively addressed within the context of a single condition (3) requiring a Construction and Environmental Management Plan; the latter as understood in relation to BS 42020:2013, and in a format broadly as proposed by WDC. This would draw together the findings and recommendations of various submitted reports within a single methodology that would also address pollution risks. I have not referenced withdrawn EA guidance. A pre-commencement condition is required as ecological impacts will arise from the outset of works.
42. I have imposed a separate condition requiring implementation of proposed enhancement measures so as to ensure that such enhancement occurs. Within this context there is no clear need to also require provision of a Landscape and Ecological Management Plan.
43. There is no need to impose suggested conditions requiring compliance with details shown on the plans as this is covered by the plans condition. In the same way, there is no need to restrict the addition of lighting as this is not shown, and I have not been directed to any relevant permitted development right.
44. I have also not imposed a condition requiring a general construction management plan, given overlap with Condition (3), and given limited scope for undue disruption and disturbance. To the extent that conflict might nonetheless arise with Thames Water in relation to shared use of the private track providing access to the site and the adjacent water works, this matter would need to be separately addressed between those parties rather than by condition.

### **Conclusions**

#### *Appeal A*

45. For the reasons set out above the effects of the development subject of Appeal A would be unacceptable, giving rise to conflict with the development plan taken as a whole. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

*Appeals B and C*

46. For the reasons set out above I conclude that the appeals should be allowed.

*Benjamin Webb*

INSPECTOR

**Schedules of Conditions**

*Appeal B*

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: STU002 (Ac) REV P1, and 001 P01.3.
- 3) Prior to the commencement of the development hereby permitted a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall be prepared in accordance with clause 10 of BS 42020:2013 ('Biodiversity – Code of practice for planning and development'), or any superseding British Standard; and shall be directly informed by the Ecological Impact Assessment dated 9 August 2022 and Invasive Species Management Plan dated 22 March 2022. The CEMP shall include the following details:
  - a) a risk assessment of potentially damaging construction activities;
  - b) identification of biodiversity protection zones;
  - c) mitigation method statements;
  - d) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction;
  - e) the location and timing of sensitive works to avoid harm to biodiversity features, including protective fences, exclusion barriers and warning signs;
  - f) the times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken;
  - g) responsible persons and lines of communication; and
  - h) the role and responsibilities on site of an ecological clerk of works or similarly competent person.Construction of the development shall then proceed in accordance with the approved CEMP.
- 4) Biodiversity enhancements outlined within the Ecological Impact Assessment dated 9 August 2022 shall be implemented in accordance with a timetable first approved in writing by the Local Planning Authority.

*Appeal C*

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: STU002 (Ac) REV P1, and 001 P01.3.



- 3) Prior to the commencement of the development hereby permitted a Construction and Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall be prepared in accordance with clause 10 of BS 42020:2013 ('Biodiversity – Code of practice for planning and development'), or any superseding British Standard; and shall be directly informed by the Ecological Impact Assessment dated 9 August 2022 and Invasive Species Management Plan dated 22 March 2022. The CEMP shall include the following details:
- a) a risk assessment of potentially damaging construction activities;
  - b) identification of biodiversity protection zones;
  - c) mitigation method statements;
  - d) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction;
  - e) the location and timing of sensitive works to avoid harm to biodiversity features, including protective fences, exclusion barriers and warning signs;
  - f) the times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken;
  - g) responsible persons and lines of communication; and
  - h) the role and responsibilities on site of an ecological clerk of works or similarly competent person.
- Construction of the development shall then proceed in accordance with the approved CEMP.
- 4) Biodiversity enhancements outlined within the Ecological Impact Assessment dated 9 August 2022 shall be implemented in accordance with a timetable first approved in writing by the Local Planning Authority.