The Planning Inspectorate

Appeal Decision

Site visit made on 25 January 2012

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 5 March 2012

Appeal Ref: APP/Y3805/A/11/2164238
Former Willows First School, Irene Avenue, Lancing, West Sussex, BN15 9N3

- 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 West Sussex County Council against the decision of Adur District Council.
- The application Ref ADC/0069/11, dated 17 February 2011, was refused by notice dated 13 May 2011.
- The development proposed is an outline application described as "outline proposals for the erection of 23 x 1, 2, 3 + 4 bed houses and flats of 1, 2 + $2^{1/2}$ storey's and ancillary external works".

Application for costs

1. An application for costs has been made by West Sussex County Council against Adur District Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted for "outline proposals for the erection of 23 x 1, 2, 3 + 4 bed houses and flats of 1, 2 + $2^{1/2}$ storey's and ancillary external works" at Former Willows First School, Irene Avenue, Lancing, West Sussex, BN15 9N3 in accordance with the terms of the application, Ref ADC/0069/11, dated 17 February 2011, subject to the conditions on the attached list.

Procedural Matters

3. This is an outline application. Detailed plans and elevations have been submitted. However, it is clear from the application forms that all detailed matters are reserved for later consideration. I shall treat the plans and elevation drawings, therefore, as being for illustrative purposes only.

4. Although not part of the reason the Council refused permission it is clear that it was seeking a Section 106 Obligation to cover financial contributions to various services and the on site provision of affordable housing. At the time of the Council's decision no such Obligation had been made. However, since then one has been submitted covering these matters. It remains necessary, though, to consider whether the Undertaking meets the tests in *Circular 05/2005* on Planning Obligations and the provisions of the *Community Infrastructure Levy (CIL) Regulations*. This is to determine whether or not it is lawful to take it into account.

Main Issue

5. Having regard to the Council's reason for refusal the main issue in this case is whether the proposed development would result in the unacceptable loss of a community facility.

6. I am aware that many local concerns go well beyond this. I shall deal with them, along with the lawfulness of taking the Undertaking into account, after addressing the main issue.

Reasons

Main issue

7. The appeal site lies within a largely residential area. It is not identified or allocated for any particular use in the development plan and, setting aside the specific concern raised, the Council has no objection to its residential use.

8. The site is roughly "L" shaped. The largest part of it fronts onto Irene Avenue and contains the buildings of the now closed Willows First School. The smaller part of the site fronts onto West Lane and contains a large wooden building used for many years for community purposes. The appellant seeks to develop the entire site for housing and thus all the existing buildings would be demolished.

9. It is the loss of the wooden community building as part of the proposed development that has lead to the Council's refusal of permission. This building, though recently closed, has been used by both young and old in the community. It is a fairly large structure that contains a large hall, several smaller rooms and a recently refurbished kitchen.

10. Saved Policy ACS5 of the Adur District Local Plan (1996) says that development which would involve the loss of an existing community facility will not be permitted. No reason has been provided for the Policy. At face value it would prevent any loss of a community facility regardless of circumstances. However, it is reasonable to assume that the Policy seeks to retain community facilities when there is a need for them and where it is practicable to do so.

11. The Council says in broad terms that there is doubt as to whether "the need for a community use of the site is no longer required". However, it makes no substantial case on this directly. It relies rather upon the views expressed by those locally, and which lead to a decision against its Officer's recommendation.

12. Local representations are that that the appeal building is the only community facility in the area for youths to use and that other premises, for youth centred uses or broader community uses, are too distant and not as suitable. It is also said that some of the premises are church run and thus only acceptable for church members.

13. In response the appellant says that the County Council has obtained substantial grant funding to replace youth facilities locally at the new Sir Robert Woodward Academy site. Work on this is due to be completed in May this year. Unsupported allegations that this is not the case have been strongly rebutted by the appellant. Views that what is being provided merely replace a previous facility are not supported by substantial evidence. It is becoming increasingly common for education premises to provide community facilities for

young people. I therefore doubt that the location of the new facilities would be a disincentive for the young to make use of them.

14. The appellant says that groups which had used the building on the appeal site have been relocated to premises such as the Globe Primary School immediately to the south of the site and the Seaside Primary school approximately 1 mile distant. The Globe primary school has 2 halls available for community use. There is little substantial evidence to support local observations that these halls have inadequate facilities.

15. There are moreover, says the appellant, other venues locally that may be used for community purposes. They include a Leisure Centre, a Youth Centre and a number of Parish Halls. The appellant has listed them and has provided some details of the facilities provided and the groups using the buildings. They represent quite a wide range of facilities and include premises other than those clearly aimed at just the young. Most of them, being within a mile or less from the appeal site, are reasonable proximity to it and the surrounding residential area. Only a few of the premises appear to be church run, and in any event it is not uncommon for such premises to be relied upon to provide community facilities. The need to cross a main road to access some of the premises is noted. However, it is not uncommon for this to be the case in urban areas.

16. Finally the appellant says that the appeal building is in very poor condition and that, amongst other things, an asbestos roof needs replacing. A detailed professional survey suggests that approximately £180.000 is required to put the building in good order. The appellant concludes that it would not be sensible to spend this money repairing an ageing building given the large investment of public money in the new facility at the Sir Robert Woodward Academy. It is said that even if this appeal was dismissed the building on the appeal site would not be re-opened as a community facility.

17. The Avenue Residents Association (TARA), established to fight the proposal on this and other grounds, has produced a draft business plan to show how the community building could be run and funded if retained. However, it relies in part on an estimate for the costs of repairs substantially lower than that provided by the appellant. Although based on a fairly full report it is acknowledged that a more comprehensive survey is also required. Moreover, whilst potential areas of funding have been researched there is no substantial evidence on what would come to fruition.

18. Drawing together my views on this issue I find the appellant's case on this issue more persuasive given the existing alternative provision referred to and the youth provision being made at the Sir Robert Woodward Academy. I also find the appellant's case more persuasive in terms of the practicality and likelihood of the appeal building being retained as a community facility.

19. I do not doubt the substantial local support for retaining the building. A great many letters to this effect have been submitted along with petitions containing many signatures. Moreover, the extent to which residents have become involved is impressive and a strong sense of community spirit emerges from all I have read. Reference is made to this being an example of localism in action and to the "Big Society" encouraged by Government. However, whilst I have weighed this all in the balance I am, for the reasons previously set out, more persuaded by the appellant's case.

20. It is concluded that the proposed development would not result in the unacceptable loss of a community facility. As such there would be no conflict with the objectives of Local Plan Policy ACS5.

21. In arriving at this view I have noted the Council's suggestion that a replacement building could be provided as part of a redevelopment scheme. However, no details have been given as to how this would be achieved in practice and funded. Moreover, given my findings on the existence of alternative premises there would be no justification for this.

Other matters

Remaining third party concerns

22. One of the key remaining concerns relates to the loss of the old Willows First School site from educational use. Amongst other things it is said that it should not be regarded as a surplus site as schools in the area are oversubscribed and lack facilities. This is linked to criticisms of an earlier restructuring of educational provision in the area and of the standard of educational facilities at the Globe primary school.

23. The appellant has responded in detail on this and it is not a matter on which the Council takes issue. In any event, such matters are primarily for the Education Authority to have regard to. They stand to be considered in a different forum to this appeal and are of limited relevance to this decision.

24. Of rather more direct relevance in planning terms are suggestions that land would not be available to provide new schools in the future were this site developed. However, no substantial evidence has been provided to support this view and it is not a ground on which the District Council opposes the scheme.

25. Many locally consider that the proposal would be an overdevelopment out of keeping with the character and appearance of the area. However, it would be at a density broadly similar to much of the surrounding area. The sketch plans and elevations show that it could be undertaken in a way that would be in keeping with the predominantly 2 storey semi-detached and terraced houses in the vicinity.

26. Adjacent to part of the site, but screened from it by a substantial hedgerow, are bungalows in Pemberton Close. Houses fronting West Lane and Irene Avenue would face onto the proposed development. Residents in Pemberton Close say that harm would arise from overlooking, over-dominance and noise and disturbance. They also have concerns on the impact of the proposal on a boundary hedge. However, the sketch plans show that it would be possible to have dwellings of a type, orientation and distance from bungalows in this road for no harm to arise through overlooking or over-dominance and for there to be no harmful impact on the boundary hedge. Noise and disturbance from the new houses need be no more than would be typical in most residential areas. The sketch plans shown that the proposed dwellings fronting West Lane and Irene Avenue could have a similar relationship to neighbouring properties to that found in many residential areas. Thus harm through overlooking, over-dominance or loss of light need not arise. There would be sufficient room on for properties on the appeal site to be located so as to ensure no unacceptable loss of light to the side of No. 20 West Lane. The adjoining school premises need not be overlooked more than is often the case in urban areas.

27. There is concern locally that insufficient car parking spaces would be provided. However, the County Transport Planning Officer is satisfied that this would not be the case and no professional evidence to the contrary has been provided. Given the relatively small scale of the proposed development the impact on the wider road network would be marginal and no technical evidence supports views to the contrary.

28. The sketch plans show accesses to the site from both West Lane and Irene Avenue. Their precise location would be for consideration at reserved matter stage. Nothing that I have read or seen supports a view that access to the site could not be satisfactorily obtained. I note concerns on the width of West Lane and Irene Avenue, however, in my experience roads of this width should safely accommodate additional traffic from development of this scale and allow for emergency vehicle access. No professional view to the contrary has been provided. I accept that at school opening and closing times there may be some congestion in Irene Avenue. However, that is not uncommon in residential areas and such congestion is generally short lived.

29. I note local concerns on drainage. However, a condition may be imposed to ensure that the development would not be occupied until the required increase in foul sewerage capacity is provided. It is possible to ensure by condition that appropriate surface water drainage is provided. Other concerns on infrastructure provision more generally are not supported by substantial evidence.

30. Unsupported observations have been made of bats and badgers being seen in the vicinity of the site. A desktop biodiversity report is not indicative of the site itself having habitats of particular nature conservation importance or of containing protected species. There is no professional evidence that biodiversity issues should stand against the proposal. It is possible that a hedgerow round part of the site may contain birdlife. However, the proposed development need not disturb it.

31. Two trees on the site are protected by a Tree Preservation Order. However, the illustrative plans shown that development could be undertaken with no adverse effect upon them.

The Unilateral Undertaking

32. The Unilateral Undertaking provides for: a) 30% of the housing on site being affordable units; and b) a £398 fire and rescue contribution; and c) a sustainable access and infrastructure contribution (TAD) to be calculated on a set formula.

33. To justify the affordable housing contribution the Council refers to its Interim Supplementary Guidance for Affordable Housing. However, there is no clear indication as to whether it is has been adopted and subjected to public consultation and cross referenced to the development plan. Without this information the weight to be given to the document is unclear. That being so I attach no weight to the affordable housing contribution.

34. The Policy background to the fire and rescue and TAD contributions have been set out, along with the methodology for their calculation. However, no evidence has been clearly given on the demand for the facilities on which the money would be spent or on what it would be spent. Given this I am not

satisfied that these contributions meet the tests in *Circular 05/2005* and the *CIL Regulations*. I attach no weight therefore to them.

Conditions

35. As I am minded to allow the appeal I have considered what conditions should be imposed in addition to the standard conditions on outline applications of this type.

36. To protect the character and appearance of the area I shall: require details of boundary treatment to be provided; impose conditions to safeguard trees and hedges to be retained; and require details to be approved for the storage of refuse and waste.

37. In the interests of highway safety and sustainability I shall require the on-site provision of car parking and cycle parking. To protect local living conditions and highway safety a construction management plan shall be provided and approved.

38. I shall impose conditions to ensure satisfactory sewage disposal and surface water drainage. Regarding the latter, I shall, in accordance with Government advice, require the provision of a Sustainable Urban Drainage System (SUDS) if feasible.

39. As this is an outline application with all detailed matters reserved it is not necessary to require the submission and approval of the materials to be used on the external surfaces of buildings.

40. I shall not impose the suggested condition removing permitted development rights for extension and other works. Circular 11/95 on conditions advises that such rights are designed to give a freedom from controls that should be acceptable in the great majority of cases. As this is an outline application with all matters reserved it is unnecessary to specify that details on the submitted plans are not approved. I shall not impose a condition on the routeing of construction traffic as the appellant would have insufficient control over this.

Conclusion

41. I am satisfied for the reasons given that, appropriately conditioned, the proposed development would be acceptable.

42. It is for the reasons given above that the appeal is allowed.

R J Marshall

INSPECTOR

Conditions

1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied. Development shall be carried out in accordance with the approved details.

5) No development shall take place until there has been submitted to and approved in writing by the local planning authority details of the hedgerow shown on plan TSP351 FS02 G to be retained, together with measures for its protection in the course of development.

6) The 2 trees covered by TPO Ref. 13.53/2/11/L shall be protected for the duration of the building works on site by the erection of fencing. This fencing shall be undertaken, in accordance with plans and particulars to be approved by the Council prior to the commencement of development, before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

7) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the facilities for the storage of waste and recyclable material. Development shall be carried out in accordance with the approved details prior to first occupation of the dwellings for which those facilities are to be provided.

8) No dwelling shall be occupied until car parking and covered cycle spaces have been provided, for those dwellings for which those facilities are to be provided, in accordance details to have been submitted to an approved in writing by the local planning authority. Those areas shall thereafter be retained for these purposes.

9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

   i) the parking of vehicles of site operatives and visitors

ii) loading and unloading of plant and materials
iii) the times for the delivery of materials during school term time
iv) storage of plant and materials used in constructing the development
v) hours of building works and demolition
vi) wheel washing facilities
vii) measures to control noise and the emission of dust and dirt during construction

10) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in Annex F of PPS25 (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
viii) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
ix) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

11) None of the dwellings hereby permitted shall be occupied until a) the off-site sewers or improvements to existing sewers required to facilitate the proposed development have been completed; and b) on site works for the disposal of sewage have been provided to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.