



ADUR DISTRICT
C O U N C I L

Adur Planning Committee
9 August 2021
Agenda Item no. 7

Ward: N/A

Planning Appeals

Report by the Director for Economy

1. Members will recall that it was recently agreed that appeal decisions would be included on the agenda for Members information. The attached two appeal decisions are both significant for different reasons and this short report highlights some of the key issues that the appeals highlight.

Appeal Decision - The Haven

3. This is a disappointing decision given that both the Parish Council and the Committee felt very strongly that this open area in front of the Haven apartments contributed to the open character of the area. The application was refused on the following grounds:
 01. **The proposed development, by reason of its scale, siting in front of The Haven and proximity to the road, would result in a prominent and dominant development which would intrude into the open character of this part of Brighton Road to the detriment of the visual amenities of the locality. The proposal is therefore contrary to policy 15 of the Adur Local Plan and paragraphs 127, 130-131 of the NPPF 02.**
 - 0.2 **The loss of the open space and the introduction of the proposed parking area in close proximity to the ground floor bedroom windows of residents in The Haven will cause a loss of amenity by way of noise, fumes and lights. The proposal is therefore contrary to policy 15 of the Adur Local Plan and paragraphs 127, 130- 131 of the NPPF**

4. The Inspector did not accept that there was any significant loss of amenity to the Haven flats from either the loss of open space or proximity of car parking. On the open space issue the Inspector concluded that,

'Whilst there would be some impact on visual amenity arising from the loss of the site's open character, this would be offset by the high architectural quality of the proposed development. I therefore conclude that the scheme would make a positive contribution to the sense of place, local character and distinctiveness of the area and it thus complies with Policy 15 of the Adur Local Plan 2017 (ALP).'

5. Whilst, it is not explicit in the Inspector's assessment of the scheme, he was clearly influenced by the housing need argument and specifically refers to what has been termed the *tilted balance* contained in the NPPF where a lack of a 5 year supply of housing exists. The Inspector refers to the delay in bringing forward strategic sites in Adur and the historic failure to meet housing requirements. This argument is increasingly being used to support development proposals across the District and can in certain circumstances override the harm caused by housing schemes. The following paragraphs highlight this issue:

'The Council's strategic sites have begun to deliver units but predicted build-out rates cannot be guaranteed. The proposal's contribution to the delivery of new homes, set in the context of a history of under-delivery of housing in the 3 year period since 2017, therefore attracts significant weight. Even relatively small sites such as this can contribute to addressing the current housing shortfall.'

Paragraph 68 of the Framework explains that small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. It further advises decision-makers to support the development of windfall sites and give great weight to the benefits of using suitable sites within existing settlements for homes. Paragraph 118 of the Framework promotes and supports the development of brownfield and under-utilised land, especially if this would help to meet identified needs for housing where land supply is constrained – as in this particular case. These aspects of Government policy all weigh in favour of a grant of planning permission.'

6. It is frustrating that the Council is unable to demonstrate a 5 year supply as this is due to the failure of the larger strategic sites to deliver housing as originally envisaged in the 2017 Local Plan. Ironically the Council is partly in

this position because of the delays caused by the Government with the New Monks Farm development. Members will recall that the decision was held up for over 7 months whilst the Secretary of State decided whether to call in the application for his determination. The delays with the West Sompting application being submitted following the adoption of the Local Plan has also affected the expected housing delivery trajectory. Whilst a number of strategic sites are now delivering new housing, the Council is at risk of potentially losing more appeals where arguments of harm are finely balanced and regard has to be given to the benefits of delivering additional housing..

7. The Local Plan review which has just started will need to review the Council's proposed housing trajectory and there will be pressure once more to allocate additional land to meet the objectively assessed housing needs of the District.

Appeal Decision - 66 Old Fort Road

8. This appeal decision highlights the increasing risk of costs being awarded against Councils where they cannot provide sufficient grounds to defend a decision.
9. The application was recommended for approval but overturned by Members on the grounds that,

'The proposal, by reason of its excessive scale and massing, would be out of keeping and detrimental to the character and appearance of the surrounding built environment therefore contrary to Policy 15 of the Adur Local Plan.'

10. However, the Inspector felt that the numerous examples of similar developments on Shoreham Beach and its eclectic mix of architectural styles meant that the Council had not been consistent in its approach and that the decision to refuse was unreasonable. Particular attention is drawn to the following paragraph:

'It is apparent that in refusing this proposal the council has not been consistent in its approach to development within this area and as a consequence the appellant has felt it necessary to pursue the appeal. In submitting evidence, the Council has been somewhat vague in substantiating its reason for refusal having regard to the examples clearly found within the area for which it has given permission.'

I therefore find that unreasonable behaviour by Highways England, resulting in the appellant incurring unnecessary and wasted expense, as described in the PPG, has been demonstrated and a full award of costs is justified. ‘

11. Members will note the error in the last paragraph (reference to Highways England rather than Adur District) which is somewhat unfortunate.. Nevertheless the decision does bring into sharp focus the need to ensure that any refusal of permission needs robust refusal reasons to avoid cost claims in the future. As yet the claim for costs has not been submitted.
12. Members will be aware that Adur has a very good success rate at appeal (notwithstanding the above decisions). The Government monitors appeal performance and if local authorities do not meet performance standards there is a risk of designation. Once a Designation Notice is served for reasons of speed of determination or quality of decision a developer may be able to apply directly to the Planning Inspectorate to determine the application. A further report to the Committee will provide an update on performance matters for 2020/21.

13 Recommendation

Members to note the report and the attached appeal decisions.

Local Government Act 1972

Background Papers:

Appeal decisions and relevant planning applications

Contact Officer:

James Appleton
Head of Planning and Development
01903 221334
james.appleton@adur-worthing.gov.uk