
Appeal Decision

Inquiry held on 25 and 26 October 2016

Site visits made on 24 and 26 October 2016

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 25 November 2016

Appeal Ref: APP/Z3825/W/16/3150965

Land at Threals Lane, West Chiltington, West Sussex

Easting: 509252 Northing: 116729

- 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 Walls and Mr Steel of Scorpio Property Limited against the decision of Horsham District Council.
 - The application Ref DC/15/0193, dated 23 January 2015, was refused by notice dated 29 January 2016.
 - The development proposed is the 'Erection of 8 new dwellings, comprising 6 detached and 2 semi-detached houses with related accesses, garaging and car parking. Provision of a new footpath adjacent to Threals Lane.'
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 8 new dwellings, comprising 6 detached and 2 semi-detached houses with related accesses, garaging and car parking. Provision of a new footpath adjacent to Threals Lane at Land at Threals Lane, West Chiltington, West Sussex in accordance with the terms of the application, Ref DC/15/0193, dated 23 January 2015, subject to the conditions set out in Appendix A.

Main Issues

2. The main issues are:
 - Whether the proposal represents a sustainable pattern of development, having particular regard to the location of the appeal site and the ability to access day-to-day services; and;
 - Whether the proposed development would make adequate provision in respect of local infrastructure with specific regards to affordable housing, education, and local sport, recreation and community facilities.

Reasons

Planning Policy Context

3. The adopted development plan for the appeal site area is the *Horsham District Planning Framework 2015* (HDPF). Policies 2, 3, 4 and 15 explain how the Council will provide the development required over the plan period, with Policy 15 focussing on housing delivery. Policies 39 and 43 refer to infrastructure provision.

4. Initially the appellant contested whether the LPA could or could not demonstrate a five year supply of deliverable housing land supply sites. However, this issue was agreed and resolved before the Inquiry in that the LPA could demonstrate a five year supply of deliverable housing sites. In this respect, Paragraph 49 of the Framework is not engaged in terms of relevant policies for the supply of housing being considered out of date.
5. Policy 2, Strategic Policy: Strategic Development¹, sets out the broad focus of the spatial strategy to 2031 in terms of growth. This is further expanded within Policies 3 and 4 of the HDPF.
6. The appeal site lies across two civil parishes; Thakeham, which most of the site lies within, and West Chiltington which contains the parcel of land to the north and the settlement which the appeal site directly adjoins. Policy 3, Strategic Policy: Development Hierarchy², sets out a development hierarchy and that development will be permitted within towns and villages that have defined built-up areas. West Chiltington Village and Common (herein West Chiltington) is classified as a 'medium village' in the policy. These are *'settlements (which) have a moderate level of services and facilities and community networks, together with some access to public transport. These settlements provide some day to day needs for residents, but rely on small market towns and larger settlements to meet a number of their requirements.'* Thakeham is classified as a 'smaller village'; that is *'Villages with limited services, facilities, social networks but with good accessibility to larger settlements (e.g. road or rail) or settlements with some employment but limited services facilities or accessibility. Residents are reliant on larger settlements to access most of their requirements'.*
7. Policy 4, Strategic Policy: Settlement Expansion³, relates to the expansion of settlements outside of the built-up areas, in order to meet identified local housing, employment and community needs. It sets out five criteria which need to be met in order to be supported by the LPA. These include that *'the site is allocated in the Local Plan or in a Neighbourhood Plan and adjoins an existing settlement'*.
8. Policy 15, Strategic Policy: Housing Provision⁴, is a 'housing numbers' policy; that is, how the LPA will deliver at least 16,000 homes within the period 2011 to 2031. Put simply, this will be through the delivery of homes already permitted (part 2), strategic sites (part 3), the provision of at least 1500 homes in accordance with the settlement hierarchy allocated through neighbourhood plans (part 4) and 750 windfall units (part 5). The HDPF glossary defines windfall sites as *'A site not specifically allocated for development in the Local Development Framework which unexpectedly becomes available for development during the lifetime of a plan.'*⁵ At the Inquiry under cross examination, the Council confirmed that were planning permission forthcoming, the site would be a 'windfall site' under this definition⁶.

¹ CD08, HDPF, pages 22 to 23

² CD08, HDPF, page 25 to 26

³ CD08, HDPF, page 27

⁴ CD08, HDPF, page 56

⁵ CD08, HDPF, page 163

⁶ Evidence of Miss Richardson, during cross-examination

9. Policy 16, Strategic Policy: Meeting Local Housing Needs⁷, seeks to ensure that a mix of housing sizes, types and tenures to meet the district's needs are provided in order to create sustainable and balanced communities. In particular, the policy seeks the provision of affordable housing on sites of between 5 and 14 dwellings at level of 20% or a financial contribution equivalent to this.
10. Policy 26, Strategic Policy: Countryside Protection seeks that outside built-up area boundaries, the rural character is protected against inappropriate development and that the proposal must be essential to the countryside location and enable the sustainable development of rural areas.
11. Policy 27, Strategic Policy: Settlement Coalescence⁸ seeks to protect landscapes from development which would result in the coalescence of settlements.
12. Policy 39, Strategic Policy: Infrastructure Provision⁹ seeks to that any additional requirements on local infrastructure is mitigated through the use of planning obligations or Community Infrastructure Levy.
13. Policy 40: Sustainable Transport¹⁰, seeks to encourage non-car modes and support appropriate to the existing transport network and there will be a choice in the modes of transport available.
14. Policy 43: Community Facilities, Leisure and Recreation¹¹, seeks to support the provision of new or improved community facilities or services, particularly where they meet the identified needs of local communities or contribute to the provision of Green Infrastructure.
15. Neither the parishes of West Chiltington nor Thakeham have a 'made' neighbourhood plan. However, both are in the process of formulating separate ones.
16. The *West Chiltington Parish Neighbourhood Plan 2015 Pre-submission Version*¹² (WCNP) is at a relatively early stage having not yet been formally submitted, examined, or subject to a referendum. In accordance with Paragraph 216 of the National Planning Policy Framework (the Framework), relevant policies within this emerging plan should be afforded little weight at the present time. Nevertheless, the WCNP does identify that '*63 households identified a need to move to affordable housing within 10 years*' and '*the number of households seeking affordable homes has increased slightly,*' with Objective 3 being '*to prioritise development in favour of affordable homes that meet a local need.*'¹³ This is expressed further in draft Policies H1 and H2, which seek to meet local housing need through two sites providing 20 affordable homes and prioritisation of affordable housing for local people¹⁴. In this respect, it is clear that there is some aspirational demand locally for affordable housing which is reflective of Policy 16 of the HDPF.

⁷ CD08, HDPF, page 58

⁸ CD08, HDPF, page 103

⁹ CD08, HDPF, page 126

¹⁰ CD08, HDPF, page 128

¹¹ CD08, HDPF, page 132

¹² CD14

¹³ CD14, WCNP, pages 12 and 13

¹⁴ CD14, WCNP, pages 28 and 29

17. The *Thakeham Parish Neighbourhood Plan to 2031 (Submission Plan) Sept. 2015* (TNP)¹⁵ is at a more advanced stage; with it having been submitted for independent examination under the relevant regulations. I heard at the Inquiry from a member of the Thakeham Neighbourhood Plan Steering Group that the Examiner's Report is expected 'imminently'. Clearly, this report is not before me at the present time and it is not for me to second guess the Examiner's findings, whatever they may be. In accordance with Paragraph 216 of the Framework, and without any detailed evidence of any unresolved objections or that the emerging one will be adopted in its current state, relevant policies within this emerging plan can only be afforded no more than limited weight at the present time, as suggested by the main parties.
18. Policy 1: A Spatial Plan for the Parish of the TNP indicates that '*proposals outside of a built up area boundary will be required to conform to Development Plan policies in respect of the control of development in the countryside*' and '*in doing so, proposals must not undermine the visual and physical integrity of the gaps between the built-up areas of Thakeham, West Chiltington...*'¹⁶ Put simply, the supporting paragraphs of the policy explain that housing permissions for the period 2011 – 2014 resulting in 221 consented homes, is a quantum considerably greater than is appropriate in a rural location. In this respect, there is no provision within the TNP to deliver any of the 1500 homes under part 4 of Policy 15 of the HDPF, as these are already covered under part 2 of the aforesaid policy.
19. I heard at the Inquiry that the area covered by the 'gaps' element of Policy 1 of the TNP, as shown on Inset Map Central Area as 'A' with yellow hatching¹⁷ has been increased to cover the appeal site area¹⁸, which has occurred after the Strategic Environment Assessment (SEA) and Sustainability Assessment (SA) and consultation have been undertaken.
20. Policy 11: Local Spaces of the TNP designates Local Green Spaces, which includes x) *Hardborough/High Bar Copse*¹⁹, as shown on the TNP Policies Map July 2015, Inset Map Central Area²⁰, indicates that '*proposals for development in a Local Green Space will be resisted, unless they are ancillary to the use of the land for a public recreational purpose or are required for a statutory utility infrastructure purpose.*' The appeal site lies within the area designated as a Local Green Space in this emerging plan.

Whether a sustainable pattern of development

21. The appeal site is located on the eastern side of Threals Lane, which itself forms the boundary between the parishes of West Chiltington to the west of the lane and Thakeham to the east. The street scene is characterised by the western edge of Threals Lane comprising large mainly detached houses, with development on the eastern side generally more sporadic. The site itself contains a number of single storey corrugated roofed structures along its western edge.

¹⁵ CD11, TNP

¹⁶ CD11, TNP, page 23

¹⁷ CD11, TNP, page 41

¹⁸ IP1, map showing increased yellow hatched area 'A'

¹⁹ CD11, TNP, page 35

²⁰ CD11, TNP, page 41

22. Whilst a large part of the appeal site lies within the Thakeham parish, in practice the nearest settlement to the appeal site is directly located to the west in the form of West Chiltington. In practical terms, any future occupiers are likely to identify with the 'medium village' of West Chiltington, both in terms of serving their needs and geographically, rather than the 'small village' of Thakeham, which would be accessed either using the adjacent bridleway or a circuitous road route.
23. This is of relevance, as Policy 4 of the HDPF which deals with development outside of built up area boundaries indicates, at part 1, that a site will be supported where it is allocated and adjoins an existing settlement edge. The appeal site is neither allocated within the development plan or a made neighbourhood plan. The main parties broadly agreed at the Inquiry that the proposal would fulfil parts 2 to 5 of the Policy. The tension here lies between the wording of Policy 4 at part 1, and the lack of any other specific policy dealing with windfall sites and the criteria they might be assessed against. The appellant made the point that the 'and' in the sentence should be an 'or' for it to read with clarity or sense. However, it is not my role as a Section 78 appeal Inspector to re-examine or re-draft what is a recently adopted policy.
24. Nonetheless, the LPA rely almost exclusively on this one sentence of this one policy as the basis for an 'in principle' objection to the scheme. At paragraph 5.2 of Miss Richardson's Proof²¹, it states that *'the appeal scheme does not comprises sustainable development by virtue of its non-compliance with the Development Plan and because the development conflicts with the aims of the NPPF in terms of sustainable locations for new development.'* This appears to me to be a singular approach, held together by the sole thread of the site not being allocated. I am not convinced that the approach of a site being automatically 'unsustainable' if it is not allocated in a development plan is a pragmatic, realistic or common sense one.
25. It may well be the case that a site is sustainable, yet unallocated for any number of reasons. But this can only be considered after one assesses if a proposal would or would not constitute a 'sustainable development'. Indeed, it is clear that the overarching aim of the HDPF seeks to deliver sustainable development, and this is partially through a focus on a settlement hierarchy as detailed in Policy 3. This is broadly reflective of the Framework, which at Paragraph 49 indicates that *'housing applications should be considered in the context of the presumption in favour of sustainable development'*.
26. Paragraphs 7 and 8 of the Framework detail the three mutually dependent limbs of sustainable development namely; economic, social and environmental. How the proposal could meet these is set out in detail within the Proof of Evidence of Mr Rodway²², but are nonetheless useful to summarise here and aspects of these require further exploration, which I will also undertake below.
27. The economic limb could be achieved through the creation of jobs during the construction phase and the revenue from factors such as the new homes bonus and council tax. These are factors which would enable the development to meet the economic role of sustainable development. They are also modest benefits weighing in favour of the proposal.

²¹ Proof of Evidence of Aimee Richardson - Land at Threals Lane, West Chiltington

²² Proof of Evidence, Tim Rodway

28. The social role could be achieved through the provision of housing within the south east of England, where there is a real and serious deficit of housing across the region. In addition to the six market housing dwellings, the scheme would also provide two affordable housing units within the West Chiltington parish, where the emerging WCNP and other documents identify there is local demand for such accommodation. I consider this specific matter in greater detail within the section on Local Infrastructure.
29. In terms of daily services, the LPA is concerned that future occupiers would be reliant upon the private motor car to access these and that this dependency would render the proposal as unsustainable. However, the appeal site directly adjoins an existing rural community, and it is not uncommon in rural areas for there to be greater reliance on private vehicles in a way very different to those living in large towns or cities, for example. Moreover, the adopted development plan identifies that West Chiltington has an existing moderate level of services and facilities and some access to public transport. Indeed, Thakeham, as a small village under Policy 3, is identified as having good accessibility to larger settlements. What is more, by the local planning authority's own adopted development plan classification of West Chiltington as a medium village under Policy 3 of the HDPF, there is a clear local plan policy indication that the directly adjoining settlement already provides a range of day-to-day services or has good accessibility to them.
30. Indeed, I was able to see that within West Chiltington itself there are a variety of services and facilities serving the local population, which include two post offices (one containing a small convenience store), butchers, hair salon, beauty salon, a primary school, church, village hall, sports pavilion, visitor accommodation and allotments, for example. These are located about 10-15 minutes, at a moderate walking pace, from the appeal site, a walk I undertook during my second site inspection. More widely, there is a doctor's surgery in Storrington to the south, and a further primary school in Thakeham. There is also an existing bus service route that runs 7 days a week within walking distance from the appeal site. In terms of services such as dentists, secondary schools, hospitals and supermarkets, for example, these are located further afield in larger towns such as Pulborough and Storrington.
31. I acknowledge the Council's concerns that access to some services will be by motor vehicle, given some of the distances or routes involved. However, the settlement of West Chiltington is served by a number of services that could be utilised on a daily basis by a variety of travel modes. Indeed, the level of services and facilities within this particular settlement are especially generous when compared to others within this part of West Sussex – including Thakeham to the east. I am reinforced in this view by the fact the LPA have specifically identified West Chiltington as a 'medium village', rather than an 'unclassified settlement' for example. When one takes into account the existing services within West Chiltington, and also those provided further afield in either smaller villages or larger towns, it is clear that future occupiers would not be solely reliant upon the use of private motor vehicles to any greater extent than existing residents.
32. Accordingly, I find that the ability to access day-to-day services in a manner not dissimilar to existing residents within a rural settlement adjoining the site means that the proposal would not represent a non-sustainable development due to rural communities having a greater reliance upon the private motor car.

In this respect, and taking into account the provision of both market and affordable housing, I find that the proposal would fulfil the social role of sustainable development.

33. In terms of the environmental limb of sustainable development, the proposal acknowledges the need to protect dormice and the site itself is, at the present time an area of unused land; with its last use as agricultural land in the form of a pig farm. I note that the emerging TNP allocates the land as Local Green Space within a wider geographical allocation of Hardborough/High Bar Copse in emerging Policy 11. Clearly this neighbourhood plan has not been made and should be afforded the limited weight I have indicated above. Nonetheless, the emerging TNP is an expression of how the community of the Thakeham parish wish to see their area change over time, and I have therefore considered the TNP carefully.
34. I saw that the character of the wider proposed Local Green Space is mainly wooded with a bridleway running through part of it. In contrast, the appeal site does not have any public access across it, and on a number of boundaries there are fences preventing such access. Added to this is the overgrown nature of the site and the lack of large trees within main part of the site, both of which create a different character to the copse (or wooded) area. The supporting paragraphs of emerging Policy 11 of the TNP indicates that *'the green spaces are an integral part of the Parish and The policy seeks to protect them for the enjoyment of future generations, to protect and enhance biodiversity, to promote health and recreation and to contribute to rural tourism.'*²³
35. The proposal in this case would protect and enhance biodiversity through the creation of an area exclusively set aside for dormice a species for which a nascent population has been found onsite. These are protected under both *The Wildlife and Countryside Act 1981* (as amended) and the *Conservation of Habitats and Species Regulations 2010* (as amended) and are a European protected species. The provision of such an area for an emerging population of dormice, which can be secured through the use of a suitably worded condition, is a significant benefit in favour of the proposal. The proposal has also taken into account existing protected trees on the site and nearby, and has sited the proposed dwellings in a manner that the largest or most important can be retained.
36. The appeal scheme would also improve the appearance of what is a relatively unkempt area of scrub land, thus providing a visual benefit on the edge of settlement location. The provision of a footpath along Threals Lane would help improve and provide safer access to the public bridleway and wider public rights of way network. The proposal also makes provision for the improvement of facilities at the West Chiltington Recreation Ground, which would help improve public open space within the local area, as emerging Policy 11 of the TNP broadly seeks to achieve.
37. In terms of the 'Gap' policy set out at Policy 1 of the TNP, this seeks to prevent the coalescence of settlements, very much in the way that Policy 27 of the HDPF pursues. Indeed, Policy 27 sets out that *'development will be resisted unless it can be demonstrated that there is no significant reduction in the openness and 'break' between settlements.'* The main parties agree that the

²³ CD11, TNP, page 35 to 36

proposal would not result in a coalescence of the settlements of Thakeham and West Chiltington. Given the intervening large area of copse that would remain unaffected by the proposal, I consider that there would remain a clear visual and physical break between these settlements and therefore the proposal would not offend Policy 27 of the HDPF, nor emerging Policy 1 of the TNP. As a result of these various factors, I consider that the proposal would fulfil the environmental role of sustainable development.

38. At this stage, I conclude that the proposed development would broadly accord with Policy 2, Policy 3, Policy 4, Policy 15, Policy 26, Policy 27, Policy 40 and Policy 43 of the HDPF, the aims of which I have aforesaid. It would also broadly comply with the provisions of both emerging Policy 1 and emerging Policy 11 of the TNP and the general thrust of the WCNP for the reasons stated above.

Local Infrastructure

39. At the Inquiry the appellant submitted a signed and dated unilateral undertaking, under Section 106 of the TCPA (herein S106). The main parties considered that this overcomes the second reason for refusal on the Council's decision notice. Nevertheless, this does not remove the requirement for me to consider the contents of the S106 against the tests set out in the Framework and the Community Infrastructure Levy Regulations 2010.
40. Put simply, the S106 makes provision for education: consisting of £31,511 for primary education, £33,913 for secondary education and £7,945 for sixth form education; a sum of £3,717 for community facilities for the Parish Council; monies of £15,197 for open space and recreation; and two, 3 bedroom dwelling units of affordable housing²⁴. The matters set out in the S106 are detailed within Horsham District Council's *Written CIL Justification Statement* (undated) and the *Written CIL Justification by West Sussex County Council* dated 6 July 2016, both of which were submitted prior to the opening of the Inquiry.
41. These monies are sought in connection with Policy 39 and Policy 43 of the HDPF, as supported by the *Planning Obligations Supplementary Planning Document June 2007*²⁵ (SPD). In particular, the education contribution would be used for primary education at West Chiltington Primary School and secondary and sixth form education at Steyning Grammar School. Given the scale of the development at eight dwellings, and the relative proximity of these schools to the appeal site, it is not unreasonable to assume that future younger occupiers of the dwellings would both create and add to the existing demand for these education services.
42. The sums sought for community facilities and open space relate to the need identified by West Chiltington Parish Council to improve the play equipment and skate park facilities at West Chiltington Recreation Ground and the Parish Reading Room and Museum. These are facilities that future occupiers are likely to use, for both leisure and recreation, and are a realistic distance from the appeal site to be used on a regular basis by future occupiers.

²⁴ APP2

²⁵ CD10 *Planning Obligations Supplementary Planning Document June 2007* – Although the weight of this document is limited as it was adopted after the adoption of the HDPF and does not specifically refer to this adopted development plan or the policies contained therein.

43. The LPA has confirmed at Paragraph 3.4 of its *Written CIL Justification Statement* that the projects specified have no previous obligations secured to fund them in relation to the five-contribution pooling limit. With no evidence to the contrary, I see no reason not to concur.
44. Policy 16 of the HDPF seeks the provision of affordable housing at a rate of 20% on sites of between 5 and 14 dwellings. This reflects the information contained within the draft WCNP, where affordable housing is sought within West Chiltington and in its draft Policies H1 and H2. This demand is also supported by the *Thakeham Housing Needs Survey Report 2009*²⁶ and the *West Chiltington Parish Housing Needs Report 2014*²⁷, the latter of which at page 13 indicates 64% support for affordable housing. I am reinforced in the view that some demand exists locally by the fact that the *Horsham District Council Housing Authority Monitoring Mid Yearly Update May 2016*²⁸ indicates at paragraph 4.72 that '*challenges of affordability and access to housing finance remain*' and that such demand has increased since 508 households were on the LPAs waiting list as at March 2015, representing an increase of 23 households from 2013/14²⁹.
45. I note the guidance set out in the national *Planning Practice Guidance* (the Guidance) and the *Written Ministerial Statement 'Small-scale Developers' on 28 November 2014* in terms of affordable housing³⁰. Put simply, these set out that for developments of 10 units or less, affordable housing should not be sought by the LPA. In this case, the LPA has set out why the HDPF seeks affordable housing and this is supported by the emerging WCNP and other documents considered above.
46. The LPA's stance of proactively seeking affordable housing in this case, as indicated by the second reason for refusal, is inconsistent with current national guidance. However, this does not negate the fact that there is a real and pressing need for affordable housing within the region, within district, and within the immediate vicinity of the appeal site. When considered in this local context, and taking into account the provision of Section 38(6) of *The Planning and Compulsory Planning Act 2004* (as amended), which gives primacy to the development plan, and that the provision of two affordable housing units in this case are offered willingly by the appellant in this case to meet a specific local need, these would be a significant benefit in favour of the proposed development in this case.
47. Paragraph 204 of the Framework and CIL Regulation 122(2) set out the three tests for seeking planning obligations: that they must be '*necessary to make the development acceptable in planning terms, directly relate to the development, and fairly and reasonably related in scale and kind to the development.*' All the obligations in this case are necessary, directly related, and fairly and reasonably related to the development. Therefore, they meet all the tests within the CIL Regulations 122 and 123, and should be taken into account in the decision. What is more, the provision of both affordable housing

²⁶ CD24

²⁷ CD25

²⁸ CD27

²⁹ CD27, paragraph 4.75, page 24

³⁰ <http://planningguidance.communities.gov.uk/blog/guidance/planning-obligations/planning-obligations-guidance/> accessed 31 October 2016 and <http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141128/wmstext/141128m0001.htm#14112842000008> Small-scale developers

and contribution to community facilities, and public open space and recreation, are public benefits which weigh in favour of the grant of planning permission.

Other Matters

48. A number of concerns have been raised by interested parties, and I now consider these before coming to an overall conclusion. I note the concerns raised by interested parties in relation to trees, including those protected by a Tree Preservation Order (TPO), that the site (or a part thereof) lies within Flood Zone 1 and apprehensions over flooding, concerns relating to traffic movements and highway safety, and in terms of land contamination.
49. However, in many of these cases there is no objection from various bodies such as the Environment Agency or the local highways authority, or from the Council's Arboricultural, Environmental Health or Flooding Officers. What is more, I have not been provided with cogent or detailed evidence that points to any significantly different conclusions than those found by these professionals in their respective fields of expertise. With little contradictory evidence, I see no reasons not to concur with the comments made, and accordingly I do not find that these matters provide justification for the dismissal of planning permission in this case.
50. I acknowledge the concerns raised by West Sussex County Council in respect of ecology and the level of information submitted in respect of specific species such as Great Crested Newts and Bats. However, since then the appellant has submitted an ecological report and further surveys³¹ which consist of site specific assessment. What is more, beyond asserting that some potential habitats might exist on site, the comments from the County Council do not specifically identify species, such as Great Crested Newts, having been recorded on the appeal site. I do not consider, on the basis of the evidence before me, which includes a site specific ecological survey and report, that there is a reasonable likelihood of these species being present on the appeal site and therefore the County Council's concerns of the lack of this information does not, in itself, point to a dismissal of the proposed scheme.
51. Lastly, England is suffering from a real and acute housing shortage, which is recognised at Paragraph 46 of the Framework in terms of anticipating a significant boost in the supply of housing. This problem is especially acute within the south east, and the eight dwellings proposed here, including two affordable housing units, which contribute to supply should be considered as a benefit in favour of the proposal; irrespective of what position a LPA is able to demonstrate in terms of housing land supply.

Conditions

52. A number of conditions were submitted within the agreed Statement of Common Ground by the main parties. In considering these I have taken into account the points made at the Inquiry and Paragraph 206 of the Framework and the Guidance in respect of the use of planning conditions. Where appropriate I have re-drafted the wording so as to ensure compliance with the above tests.

³¹ CD03, PJC Ecology, Preliminary Ecological Appraisal, April 2015

53. A condition requiring the proposal to be carried out in accordance with the submitted drawings is necessary for the avoidance of doubt and to provide certainty.
54. A condition relating to a construction management plan including hours of construction is necessary to minimise disruption to residents during building works and for highway safety reasons.
55. Details of surface water, foul drainage and sewerage are necessary and reasonable in order to ensure that the site is adequately drained, both in terms of excess water onto the highway and more generally.
56. The submission of details for refuse and recycling storage would be onerous in this case, and are not necessary given the large areas of space around the proposed dwellings for the storage of such items.
57. Details of soft and hard landscaping and the submission of samples of external materials are necessary in order to protect the character and appearance of the street scene.
58. The removal of permitted development rights afforded under *The General Permitted Development Order 2015* (as amended), or other such restrictive conditions relating to extensions, outbuildings, boundary treatments and external lighting would be both burdensome by removing the ability of future occupiers to extend or alter their property freely on what are generally spacious plots, and may be difficult to enforce. What is more, boundary treatments can be dealt with by means of the landscaping condition. There are no exceptional reasons for the removal of permitted development rights in this case and this type of condition would therefore fail to meet the tests set out in Paragraph 206 of the Framework in this case.
59. A condition requiring that the vehicular access and the footpath have been constructed before occupation is necessary to protect highway users, including pedestrian and drivers. However, these details are shown on drawing 599/02 Rev B, and therefore the submission and approval of further details in this respect is not necessary. A condition requiring details of visibility splays, and that these are retained at the access points is necessary and reasonable given the narrowness of the lane. A condition requiring the provision of parking spaces is not necessary as the driveways shown on the plans are large enough to provide room for parking.
60. A condition requiring the works to be carried out in accordance with the tree survey and report³² including the standards set out in *BS5837:2012 Trees in relation to construction* and the use of root protection areas, is necessary in order to protect retained existing trees on the site during construction works. For similar reasons, details of trenches and pipes runs for services to be submitted to and agreed by the LPA would be reasonable in order to ensure that the roots of trees are not unnecessarily affected by the proposed development and to fulfil the duty under Section 197 of the TCPA to include appropriate provision for the preservation of trees.
61. Given the previous use of the site for pig farming, conditions relating to contamination and unexpected contamination are reasonable and necessary in

³² CD03, Tree Survey & Report, Furse Landscape Architects dated 20 January 2015 and amended 10 February 2015

order to minimise any harm to human health. However, a condition requiring a licensed contractor to remove waste is dealt with by other regulatory regimes and it would be onerous to replicate such provision under the Planning Acts. For similar reasons, a condition removing the ability to burn anything on the site would also be dealt with by air pollution controls, and it may well be that the most effective and efficient method of dealing with plant waste, such as bracken and scrub, is on site.

62. The submission of an Ecological Mitigation and Management Plan, incorporating the recommendations set out in the *PJC Ecology, Preliminary Ecological Appraisal* (dated April 2015) and the inclusion of biodiversity enhancements such as bat and bird boxes, is reasonable given that these could provide suitable mitigation to any resident species on or near to the appeal site. For similar reasons the setting aside of the area shown on Figure 6³³ for dormice, including restrictions on any future residential development of that land under permitted development rights with items such as sheds or garages for example, is reasonable in this case given the ecological surveys³⁴ that have identified such species using parts of the appeal site.

Overall Conclusion

63. The proposal would result in a small conflict with one single element of Policy 4 of the HDPF, in terms of the fact the site is not allocated within the development plan or a made neighbourhood plan. However, based upon the evidence before me, there are no other material conflicts with the development plan and the site represents a windfall site as defined by the glossary in both the HDPF and the Framework and as identified under Policy 15 of the HDPF. Whilst the proposal results in a 'technical' breach of part of one policy of the development plan, the adopted development plan for the area should be taken as a whole and conflict with one or more policies does not mean that the proposed development does not comply with the plan in its entirety.
64. Set against this extremely limited conflict, are a number of benefits including the provision of 8 homes, of which 2 three bedroom dwellings (20%) would be affordable housing, and an area specifically set aside for dormice, both of which weigh significantly in favour of the proposal. There would also be contributions to community facilities, and public open space and recreation, the creation of direct and indirect jobs during the construction phase and the introduction of a further 8 households which could help sustain services within the wider locality and the sustainable location of the development on the edge of an existing settlement which is identified as a medium village within the HDPF, all of which weigh moderately in favour of the proposal.
65. When the small degree of conflict with one sentence of an adopted development plan is set against the overall thrust of the policies of the adopted development plan and the Framework, it is clear that the proposal would represent a sustainable development for which a presumption applies. Accordingly, I find that the proposal would accord with the development plan and there are no material considerations that indicate that the proposal should not be approved.

³³ APP4

³⁴ CD03 Dormouse Survey and Mitigation Strategy, The Ecology Partnership November 2015

66. For the reasons given above, and having taken into account all matters raised, including those by both the main and interested parties, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Laura Philips of Counsel

Instructed by Horsham District Council

She called:

Aimee Richardson

Senior Planning Officer –
Development Control

FOR THE APPELLANT:

Christopher Boyle, QC

Instructed by Rodway Planning

He called:

Tim Rodway

Philip Bell

Planning Agent

Highways and accessibility witness

INTERESTED PERSONS:

Speaking against the proposal:

Jean Locker

Thakeham Neighbourhood Plan Steering
Group Member

Robert Gustar

West Chiltington Parish Council –
Planning Chairman

Sharon Davis

West Chiltington Parish Council

Steven Mead

Local resident

Speaking in favour of the proposal:

Alan Harris

Local resident

Documents submitted at Inquiry:

By the LPA:

LPA1	LPA's Closing Submissions (by Laura Philips of Counsel)
LPA2	List of places to visit during unaccompanied site inspection agreed between the main parties, in consultation with interested parties

By Appellant:

APP1	Copies of eight representations from persons unable to attend Inquiry
APP2	Unilateral Undertaking by Scorpio Limited dated 25 th October 2016
APP3	Statement of Common Ground relating to 3146231
APP4	Figure 6. The red dotted line delineates the recommended new garden boundaries and the area marked out in orange is the recommended area for enhancement works for dormice
APP5	Closing Submissions on behalf of the appellants, by Christopher Boyle, QC of Landmark Chambers

By interested parties:

IP1	Copy of email from Neighbourhood Planning Officer to Clerk of Thakeham Parish Council and copy of Policies Map Central inset (undated)
-----	--

Appendix A – List of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: RPC/SP1; RPC/LOC1; 599/01 REV B; 599/03; 599/05; 599/06 REV A; 599/07 REV A; 599/02 Rev B; 599/04; ROD-THE-TS-001 Rev A; ROD-THE-TS-002 Rev A; ROD-THE-TS-003; and, Figure 6 of the Dormouse Survey and Mitigation Strategy – Land at Threals Lane, West Chiltonton by the Ecology Partnership (December 2015).
- 3) Prior to the commencement of the development hereby permitted, details of surface water drainage designed so as to prevent the discharge of water onto the public highway shall be submitted to and approved in writing by the local planning authority. The development thereafter shall be carried out in accordance with the approved details.
- 4) No development shall take place, including any works of demolition or site clearance, until a Construction Method Statement and Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The Statement and Plan shall provide for:
 - i) the anticipated phasing of site clearance including demolition and the construction of the dwellings, which should take into account the avoidance of specific times of the year in order to protect local biodiversity and species on or near to the appeal site;
 - ii) the anticipated number, frequency and types of vehicles used during clearance and construction phases;
 - iii) the method of access and routeing of these vehicles;
 - iv) the parking of vehicles of site operatives and visitors;
 - v) loading and unloading of plant, materials and waste;
 - vi) storage of plant and materials used in constructing the development;
 - vii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - viii) wheel washing facilities;
 - ix) measures to control the emission of dust and dirt during construction;
 - x) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - xi) delivery, demolition and construction working hours.

The approved Construction Method Statement and Management Plan shall be adhered to throughout the construction period for the development.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

- i) a statement setting out the design objectives and how these will be delivered;
- ii) earthworks showing existing and proposed finished levels or contours;
- iii) a detailed plan and specification for topsoil stripping, storage and re-use on the site in accordance with recognised codes of best practice;
- iv) planting and seeding plans and schedules which specify the species planting size, densities and plant number and locations. Such details should also include those to be used in the area set aside for dormice as part of Condition 16 of this decision;
- v) tree pit and staking/underground guying details;
- vi) a written hard and soft specification of planting, including ground preparation, cultivation and other operations associated with plant and grass establishment;
- vii) means of enclosure and retaining structures;
- viii) boundary treatments, including details of the finishes and materials for any walls, fences or other similar structures;
- ix) vehicle parking layouts;
- x) other vehicle and pedestrian access and circulation areas;
- xi) hard surfacing materials, including their layout, colour, size, texture, coursing and levels;
- xii) proposed and existing functional services above and below ground [for example drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant];
- xiii) lighting, floodlighting and/or CCTV; and
- xiv) full details of a scheme of management and/or maintenance of the items listed from i) to xiii).

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with the scheme of management and/or maintenance set out at xiv) of this condition.

- 6) No development of buildings shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre by 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 7) Prior to the commencement of the development hereby permitted, full details of foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. The drainage works shall thereafter be implemented and retained as approved.
- 8) No part of the development hereby permitted shall be occupied until the proposed vehicular accesses and the footpath are installed and made

available for use as shown on drawing 599/02 Rev B. Thereafter the footpath shall be retained and shall not be permanently blocked or obstructed.

- 9) No part of the development hereby permitted shall be occupied until visibility splays of 2 metres by 39 metres have been provided at the proposed vehicular accesses into and from the proposed dwellings. The visibility splays shall thereafter be retained and no structure exceeding 0.6 metres in height shall be placed within these visibility splays.
- 10) The development hereby permitted shall be carried out strictly in accordance with the Tree Survey & Report by Furse Landscape Architects Ltd dated 20 January 2015 and amended 10 February 2015. In particular, the root protection areas (RPAs) shall be implemented and retained during construction works as suggested, and in accordance with BS5837:2012 or any replacement or updated standard.
- 11) Prior to the commencement of the development hereby permitted, full details of any trenches or pipe runs for services, drains or any other purpose, to be excavated anywhere within the root protection area of any tree or hedge targeted for retention on or off the site shall be submitted to and agreed in writing with the local planning authority. Thereafter the development shall be carried out in accordance with the approved details.
- 12) No development shall commence until an assessment of the risks posed by any contamination (including but not limited to asbestos), carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority.

The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

- 13) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority in writing. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.
- 14) No development shall take place, including any works of demolition or site clearance, until an Ecological Mitigation and Management Plan (EMMP) is submitted to and agreed in writing by the local planning authority. The plan shall include;

- i) Any necessary pre-work surveys, updates or assessments;
- ii) A detailed dormouse, badger and reptile mitigation method statement;
- iii) A lighting plan for the site;
- iv) Capture recommendations where necessary; and,
- v) Full details of any biodiversity enhancements, including features such as bird and bat boxes, and any other recommendations to be implemented as made in the PJC Ecology/The Ecology Partnership 2015 supporting documents.

Any measures submitted within the approved EMMP shall be implemented as agreed, and thereafter retained.

- 15) The extent of the grounds serving the proposed dwellings shall reflect those shown in Figure 6 of the Dormouse Survey and Mitigation Strategy – Land at Threals Lane, West Chilton by the Ecology Partnership (December 2015). No domestic or residential building, structure, or means of enclosure shall be erected on the land contained within the orange polygon (on the eastern side of the site) of the aforesaid drawing, whether or not permitted by the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification).