



## Appeal Decision

Inquiry Held on 2-4 October 2018

Site visit made on 2 October 2018

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 2 November 2018**

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**Appeal Ref: APP/L3815/W/17/3182355**

**Land at Koolbergen, Kelly's and Bellfield Nurseries, Bell Lane, Birdham, West Sussex PO20 7HY**

- 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 Mr and Mrs Paul Knappett against the decision of Chichester District Council.
  - The application Ref BI/16/00933/OUT, dated 4 March 2016, was refused by notice dated 17 February 2017.
  - The development proposed is "the erection of 77 houses, B1 floorspace, retail and open space, with the retention of one dwelling".
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The appeal seeks outline permission with all matters reserved except access. In all other respects it is agreed that the submitted plans are illustrative.
3. The appeal was made in August 2017, and an inquiry was originally scheduled for March 2018, but was postponed at the appellants' request due to illness. For the present inquiry, updated evidence was accepted, reflecting various changes in the relevant planning circumstances. I have dealt with the appeal on the basis of the situation as it exists now.
4. In the Council's decision, Refusal Reason No 2 (RR2) related to highway safety and traffic impact. Since then however, the appellants have entered into a Section 106 agreement, which requires the developer to provide a shared pedestrian/cycle path along part of Bell Lane, with street lighting, plus two new bus lay-bys and a commuted sum for their future maintenance. The agreement also provides for an agreed contribution towards junction improvement works by Highways England at the A27 Stockbridge roundabout. In the light of these agreed provisions, the Council confirmed at the inquiry that RR2 is now withdrawn.
5. The Council's RR4 related to lack of provision for affordable housing, open space, children's play, and mitigation for the impacts on the Chichester and Langstone Harbours Special Protection Area (SPA). These matters are now also addressed in the S.106 agreement, and again the Council confirmed at the inquiry that it no longer wished to pursue these objections.

6. In addition, the S.106 agreement makes various commitments relating to the proposed Class B1 and retail elements. In particular, the B1 building is to be a light industrial unit with a minimum floorspace of 700 sq m, and the retail unit is to have at least 150 sq m. Both are to be provided prior to the occupation of the 40<sup>th</sup> open market dwelling.

### **Main Issues**

7. In the light of all the submissions made, the main issues in the appeal are:
- whether the appeal proposals would accord with the relevant development plan policies, for the location of new housing and the protection of the countryside;
  - whether there is a need for more housing land in the District;
  - the proposed development's effects on the local horticultural industry;
  - and the effects on the character and appearance of the countryside.

### **Reasons for Decision**

#### *Accordance with housing location and countryside policies*

8. The development plan for the area comprises the Chichester Local Plan<sup>1</sup> (the CLP), adopted in July 2015, and the Birdham Parish Neighbourhood Plan (the BPNP), which became 'made' in June 2016. The settlement boundary for Birdham is defined in the BPNP. The appeal site lies outside this boundary, and is therefore to be treated, for the purposes of the relevant planning policies, as part of the countryside.
9. In the CLP, Policy 2 sets out the District's development strategy and settlement hierarchy. Most housing and other development is to be focussed on the city of Chichester itself and the four largest villages, termed 'Settlement Hubs'. Birdham is identified as one of the 'Service Villages', which form the third and lowest tier of the hierarchy, where provision is to be made for small-scale development consistent with the indicative housing numbers set out in Policy 5. In the rest of the plan area, outside the identified settlements, Policy 2 restricts development to that which requires a countryside location, or meets essential local rural needs, or supports rural diversification.
10. In the present case, by virtue of its location outside the village boundary, the appeal site lies within this latter area. The proposed development does not fall within the types of development normally regarded as needing a location in the countryside, and nor is there any evidence that it is locally needed. Although 23 of the dwellings would be affordable, and subject to Council nomination rights, there is no evidence that local needs in this regard cannot be met through other existing provisions. In any event, the remaining 54 units would be for open market sale, and thus would not be tied to any particular needs. Whilst the proposed Class B1 building and retail unit might be argued to support rural diversification, these are only minor elements of the scheme. Consequently, viewed as a whole, the appeal proposals do not meet any of the criteria in Policy 2. The scheme therefore conflicts with that policy, and with the overall strategy which it embodies.

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<sup>1</sup> The full title is the 'Chichester Local Plan: Key Policies (2014-2029)'

11. CLP Policy 45 complements this strategy by confirming the types of development that may be permitted outside settlements. These include cases where the development requires a countryside location, and meets essential, small-scale local needs which cannot be met within or immediately adjacent to existing settlements. For the same reasons as above, none of these applies to the present appeal scheme. Whilst there is nothing in Policy 45 that expressly prohibits other types of development, such as open-market housing, neither does the policy give any support to development outside of its stated criteria. Although the policy suggests a preference for sites adjacent to settlements, compared to more remote locations, this is relevant only where the other criteria are met. It follows that the development now proposed does not accord with Policy 45.
12. In the BPNP, Policy 13 permits development outside the settlement boundary only where it complies either with CLP Policy 45 or with BPNP Policy 15; and Policy 15 itself restricts development in the rural area to that which accords with CLP Policy 45, or with paragraph 55 of the 2012 version of the NPPF, or with the General Permitted Development Order (the GPDO). For the reasons explained above, development that accords with CLP Policy 45 does not include the appeal scheme. With regard to the NPPF and GPDO references, it is made clear in the BPNP's supporting text, that what is intended in Policy 15 is mainly to provide scope for local businesses and farmworkers' dwellings. The appeal proposals therefore find no support from Policy 15, and as a consequence of this, it also conflicts with Policy 13.
13. I have had regard to the various other policies that have been referred to, but in the light of the above, I conclude that the most relevant locational policies in this appeal are those that I have identified, namely CLP Policies 2 and 45, and BPNP Policies 13 and 15. For the reasons explained, the appeal proposals would be contrary to the adopted planning strategy for the distribution of new housing, and for the protection of the countryside, as contained within these policies. The proposed scheme therefore fails to accord with these relevant locational policies, and as such would conflict with the development plan.

#### *Housing need and land supply*

14. During the inquiry, the parties reached agreement on a good many elements of the 5-year land supply calculation. For the purposes of this appeal, it is agreed that the relevant 5-year period is April 2017 – March 2022, and that the housing requirement should be based on 435 dwellings per annum, from the adopted CLP, plus a shortfall of 369 units since 2012, with a 5% buffer, and using the 'Sedgefield' method. This gives an agreed 5-year requirement of 2,671 dwellings.
15. Against this requirement, it is agreed that the deliverable supply lies somewhere between the appellants' figure of 2,624 units and the Council's 3,274 units, equating to a range of between 4.91 - 6.13 years' supply. The differences between the parties centre on six disputed sites. To be counted as part of the supply, the sites must fall within the definition of 'deliverable' as set out in the National Planning Policy Framework (the NPPF).
16. The site known as North of Shopwhycke Road (Site 34) is already under construction, with full reserved matters approval for 398 dwellings. The Council's supply figures anticipate 250 of these being completed by March 2022, at an average of 50 p.a. This implies a slightly faster building rate than

the average achieved by the developer, Cala Homes, across all of its sites in 2017, and also faster than the same company's own forecast for another local site, at Kirdford. There is also some uncertainty as to whether the completions achieved so far at site 34 have kept pace with the rate that is required. But none of these matters proves that the Council's figure of 250 units is unachievable. The original outline permission imposes a limit on the number of dwellings that can be occupied before a pedestrian/cycle bridge over the A27 has been provided, but Highways England now supports increasing this limit to 250. Consequently there is now no reason why the timing of the new bridge should delay the delivery of any of the dwellings needed for the 5-year supply. The NPPF now makes it clear that where a site has detailed planning permission, it should be considered deliverable unless there is clear evidence to the contrary. In this case there is no persuasive evidence that 250 completions cannot be achieved within the relevant period on Site 34.

17. Similar considerations apply to the land at North of Stane Street, Madgwick (Site 52). This site has planning permission, and almost all of the reserved matters have now been approved. Access works are well advanced, and materials for house construction have been delivered to the site. Nothing appears to prevent an imminent start on house-building, and there is every sign that this is what is intended by the developers, Barratt David Wilson (BDW). The Council relies on 90 completions per annum in each year from 2019/20 onwards, giving a total of 270 units within the remainder of the 5-year period. As with the previous site, this is higher than BDW's published average rate. But an average is not a ceiling; by definition, the range will include some sites where the average is exceeded. The Council's figure also exceeds the same developer's expected rate on another local site, at Selsey. But, as far as that goes, the same could be said of the appellants' own estimate for Site 52, which is only slightly lower than the Council's. Again, having regard for the NPPF's advice, there is no evidence to suggest that 270 units is an unrealistic figure for this site.
18. Neither the Kirdford Growers site (Site 59), nor Highgrove Farm (Site 68) yet has planning permission, and thus they can only be considered deliverable if there is clear evidence that completions will begin within the 5-year period. However, both of these sites are allocated for housing in the adopted CLP, both appear to be under option to house builders, and both have current full applications under consideration. In the case of Site 59, the Council has resolved to grant permission, and a S.106 agreement is apparently close to completion. Some infrastructure works are required, and the developer's suggested programme envisages construction extending beyond the relevant 5-year period. But given the relatively small size of this scheme, the Council's estimate of 25 units by March 2022 is not unrealistic. On Site 68, discussions on all technical matters are reportedly at an advanced stage. Although the site forms part of a larger parcel which may also come forward at a later date, this need not prevent the 50 units now proposed from becoming deliverable in the meantime. On both these sites, there will still be some further matters to attend to after planning permission is granted, possibly including further financial negotiations. But having regard to the advice in the NPPF, and also the Planning Policy Guidance (PPG)<sup>2</sup>, it seems to me that the above matters amount to clear evidence of a realistic prospect of housing completions on these sites, within the 5-year period. Although there cannot be absolute

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<sup>2</sup> PPG: 'What constitutes a deliverable site in the context of housing policy?' (ID: 3-036-20180913)

certainty as to the numbers that will be delivered in that time, the Council's assumptions are reasonable, and are supported by evidence. I see no reason to depart from these figures of 25 and 50 dwellings respectively.

19. The other disputed sites are at West of Centurion Way (Site 16) and South of Oving Road (Site 35). Both of these have only outline permission. On Site 16, applications have been submitted for some of the reserved matters and the discharge of conditions, but the development as a whole is a large one, and the infrastructure and community facilities required are substantial. Although two major house builders are involved, it appears that they have not yet indicated any intended start date or programme. At Site 35, matters are even less well advanced, and although a pre-application meeting has been held with one prospective developer, it is not yet known whether they have a contractual interest in the site as yet. The conditions of the outline permission include a requirement for a phase 2 contamination study and remediation scheme. No progress has yet been made with the discharge of this or any other conditions or reserved matters. Consequently, I find that on neither of Sites 16 or 35 is there clear evidence that housing completions are likely to be achieved within the relevant 5-year period. Accordingly, these sites cannot currently be regarded as deliverable. In terms of the Council's land supply figures, this means that 400 units must be deducted in respect of Site 16, and a further 100 units deducted for Site 35.
20. I therefore find that Sites 34, 52, 59 and 68 should remain included in the 5-year supply, but Sites 16 and 35 should be deleted. The net effect of these deductions is that, based on the evidence at this inquiry, the deliverable supply currently stands at 2,774 dwellings. Compared to the agreed requirement for 2,671 dwellings, this figure equates to approximately 5.2 years' supply.
21. I accept that the 5-year supply exercise has some limitations. The calculation can only reflect the situation at a single point in time, and had this appeal been heard earlier in the year, as originally scheduled, it is possible that the figures might have worked out differently. Alternatively, had it been possible to have a calculation based on completions figures for April 2018, the assessment could have been more forward-looking, rather than addressing a 5-year period that is now already half-way through. But I must base my decision on the current circumstances, and the evidence actually available.
22. I appreciate also the wider issues relating to housing need. It is not disputed that the CLP's housing targets were set below the full objectively assessed need (OAN), partly because of infrastructure constraints, and partly because a review of the CLP was to follow within 5 years. Since then, the timescale for that review has slipped, so that it may not now be completed within the required timescale; and in the present appeal, no insuperable infrastructure constraints have been identified. In the meantime, the housing need represented by the OAN is unlikely to have gone away. I note that significant weight was given to these matters in a previous local appeal<sup>3</sup>.
23. In addition, the forthcoming local plan review will also have to take into account the NPPF's new standard methodology, the 2016-based household projections, and the recent request by the South Downs National Park Authority to export a share of its housing needs into Chichester. It is therefore

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<sup>3</sup> APP/L3815/W/14/3000690, land at Clappers Lane, Bracklesham

quite likely that the District's housing requirement will increase, possibly beyond the present OAN.

24. There is some force in all these arguments, and I agree that the benefit of boosting the supply of housing land is an important consideration, irrespective of the 5-year supply position. But nevertheless, I am satisfied that the calculations set out above properly reflect the relevant guidance in the NPPF and PPG. Although the other housing-related considerations may be material, they do not negate or outweigh the results of that exercise.
25. Accordingly, for the reasons set out above, I conclude that a 5-year supply of deliverable housing land has been demonstrated. It follows that, for the present at least, the proposed development is not needed to make up any shortfall in the supply of housing.

#### *Effects on the horticultural industry*

26. Policy 23 of the BPNP seeks amongst other things to support and to avoid adverse impacts on local businesses in certain specific sectors, one of which is the horticultural industry, together with the farming, tourism and marine sectors. The development now proposed would mean the loss of a currently active horticultural business, at Bellfield Nursery. Although there is some evidence of adverse trading conditions in plant nurseries generally, there is no suggestion that Bellfield Nursery is no longer viable. To this extent the appeal scheme would conflict with Policy 23.
27. As far as the rest of the appeal site is concerned, the former Koolbergen site is now so derelict and overgrown that to bring it back into horticultural use would clearly require a considerable amount of investment in site clearance and restoration. There is nothing to suggest that this is a realistic scenario. But in the case of Kelly's Nurseries, although the horticultural business has ceased, the glasshouses and the site itself appear generally in good condition; on the face of it, there is nothing to prevent the same or a similar use being recommenced here. Although it was argued that the business had become unviable, no detailed evidence was produced to justify the site's loss from horticultural use.
28. In terms of job numbers, the employment capacity that would be lost could well be exceeded by the new B1 and retail buildings which are proposed within the development. But Policy 23 is targeted specifically at the four sectors identified above, and the new facilities now proposed are unrelated to those types of activity. The development would therefore not support or protect the particular local industries that Policy 23 is concerned with. Consequently, whilst the proposed new employment provision is a material consideration, to which I shall return later in this decision, it would not directly overcome the inherent conflict with Policy 23 in terms of the loss to the local horticultural industry.
29. In the recent past, two other nursery sites at Bell Lane were given permission for housing. However, these permissions were granted prior to the emergence of Policy 23, and also in the context of a shortfall in the district's 5-year land supply. Circumstances have therefore changed since those decisions were made.
30. I accept that the reasoning behind Policy 23 is not made clear in the BPNP, and although the CLP contains policies relating to horticulture, none of these

provides a clear basis for the level of protection that Policy 23 requires in Birdham. But it is in the nature of neighbourhood planning that policies may sometimes simply reflect local preferences and priorities. In any event, it is not disputed that the BPNP was prepared in accordance with the relevant procedural requirements, and forms part of the development plan.

31. I conclude that the proposed development would have a significant adverse impact on the local horticultural industry, due to the loss of the existing business at Bellfield Nursery, and the loss of any prospects for the resumption of horticultural use at Kelly's Nurseries. These adverse impacts bring the appeal proposals into conflict with BPNP Policy 23.

*Effects on the area's character and appearance*

32. The appeal site lies at the very end of Birdham's built-up area, beyond the extended village boundary that was redrawn in the BPNP to include the former Rowan Nurseries site. The development now proposed would extend the village even further into the countryside, and into the narrow gap between Birdham and Somerley.
33. The proposed new houses, B1 building and retail unit would be far more permanent, more solid, and more visually dominant than the existing structures on the site. The character of the land would thus be significantly changed, from semi-rural to urban. This change would be seen along the whole length of the site frontage, and indeed from a considerable length of Bell Lane in either direction. There is no reason why the development could not be designed to achieve a high quality of design and landscaping, but nonetheless, it is probable that the loss of its present relative openness would be perceived by many as a change for the worse. The development would therefore cause some harm to the area's character and appearance.
34. But on the other hand, notwithstanding its policy designation as countryside, the site is part of a village fringe area which is visually distinct from the more open country surrounding it. This part of Bell Lane is characterised mainly by plant nurseries, caravan sites, scattered dwellings and small-scale employment uses. On the appeal site itself, although the extensive glasshouses, poly-tunnels and covered growing areas are recognisably agricultural or horticultural in nature, visually they give much of the site at least a partly developed appearance. This impression is further reinforced by the two existing dwellings, and by the brick-built garage/office building at Kelly's Nursery, and the former barns and mobile home to the rear. Consequently, irrespective of how much of the site is 'previously developed land' (to which question I again return later), in terms of its visual appearance, most of the site cannot properly be described as either open or undeveloped.
35. The site's southern and western boundaries are well screened, by dense trees and hedgerows, preventing any intervisibility with the countryside beyond. The development would therefore not be seen other than from Bell Lane or from Birdham's built-up area.
36. Neither the site nor its surroundings are within the Chichester Harbour Area of Outstanding Natural Beauty (AONB), or any other landscape designation. There is no suggestion that the site is part of any valued landscape.

37. Overall therefore, the harm that the proposed development would cause to the area's character and appearance would be quite limited. Whilst the protection of landscape character is one of the aims behind the CLP's countryside policies, none of those policies seeks to insulate the whole of the District outside settlement boundaries from any change at all. NPPF paragraph 170 advocates that the countryside's intrinsic character and natural beauty should be recognised, but this does not necessarily mean protecting sites where those qualities are lacking.
38. I conclude that, on its own, the limited harm that the proposed development would cause to the area's character and appearance does not add any further significant weight to the case against the proposal. In the overall planning balance therefore, the effect in this regard is neutral.

### **Other Matters**

#### *Previously developed land*

39. The NPPF advocates the effective use of land, with particular emphasis on previously developed land (PDL)<sup>4</sup>. Substantial weight should be given to the use of suitable brownfield land within settlements, and elsewhere decisions should support the development of under-used land to meet identified housing needs. However, nothing in the NPPF requires that these considerations should outweigh development plan policies.
40. In the case of the appeal site, there is no dispute that the existing dwelling at Bellfield Nursery, and its curtilage are PDL. In addition, the former barns and mobile home on the rear part of Kelly's Nurseries could possibly fall within the definition, depending on how long the existing non-agricultural uses have been established; and the footprint of the partially-constructed farm shop, to the front of Kelly's Nursery, might also be PDL, depending on whether condition 12 of the permission for that development makes the use ancillary or freestanding. On all of these questions, the evidence is inconclusive, but for the purposes of this appeal I propose to give the benefit of the doubt to the appellants. I have therefore assumed that all of these areas are, or might be, PDL.
41. On the other hand, all of the areas currently or last used for horticulture seem to me to be excluded from being PDL, because they are essentially agricultural in nature. There is no clear evidence that any of the retail, cafe or car parking facilities associated with these nurseries are, or ever were, anything more than ancillary to the main horticultural use. These areas are therefore part of the respective horticultural uses, rather than part of any mixed use. The derelict structures and roadways on the Koolbergen site have not yet fully blended into the landscape, but even so, that part of the appeal site is not PDL, because of its previous use. The existing house and garden at Kelly's Nursery are PDL, but since these are to be retained, they have no bearing on this issue.
42. Consequently, even on the most favourable assessment, the areas of actual or possible PDL at the appeal site are, in total, no more than a small proportion of the site as a whole. In the circumstances, the opportunity to make more effective use of this small amount of PDL carries only limited weight in favour of the appeal.

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<sup>4</sup> NPPF paragraphs 117 and 118



### *The B1 building*

43. The proposed Class B1 building would provide 700 sq m of light industrial space, in one or more units. A building of this size and type would have the potential to accommodate a variety of small enterprises, possibly including start-ups or existing small firms seeking to expand. It might also be suitable for the relocation of some of the businesses currently operating from the former barns on the appeal site.
44. General support for the provision of new business space is provided in CLP Policy 3, which encourages a flexible supply of employment land and premises, to meet the District's varying needs, including a wider range of opportunities in the rural areas. Policy 22 of the BPNP also welcomes small-scale development for business use, albeit this is directed to sites within the village boundary. The NPPF seeks to support a prosperous rural economy, through sustainable growth and expansion of businesses in rural areas, including well-designed new buildings<sup>5</sup>.
45. I accept that in some cases the Council might be justified in asking for marketing evidence, to show a local need in relation to Policies 2 and 45. But that is more likely to arise where commercial space is the sole or main purpose of the development, whereas here it is only a minor element. Aside from those policies, there is no general requirement for a need or demand to be demonstrated, and CLP Appendix E has no bearing in such cases. In the present case, if evidence had been produced to show a local demand for B1 space, that could possibly have helped the appellants' case. But the lack of such evidence does not undermine the potential for the B1 building to count as a benefit.
46. I also note the Council's doubts regarding the B1 building's financial viability. However, the provision of the building is secured by the Section 106 agreement.
47. I conclude that the inclusion of the proposed B1 space represents a potential benefit to the local economy, to be set against the adverse effects on the horticultural industry, identified earlier. In the overall balance, this benefit carries some weight, albeit limited because of the building's minor role in the scheme as a whole.

### *The proposed retail unit*

48. The S.106 agreement provides for the retail unit to have a minimum floorspace of 150 sq m. No maximum is stated, but if necessary, the size could also be limited by condition. A unit of around this size would be sufficient to provide a small convenience store or similar type of local retail business.
49. CLP Policy 45 requires retail development in the countryside to be subject to sequential and/or retail impact testing where appropriate. However, the NPPF makes it clear that these are not appropriate for small scale rural development of the type and size now proposed<sup>6</sup>.
50. There is no evidence that the proposed unit would adversely affect Birdham's existing small supermarket, or that it would be unable to attract an operator.

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<sup>5</sup> NPPF paragraph 83

<sup>6</sup> NPPF paragraphs 88 and 89

Not only are these arguments contradictory, but in any event, in the absence of any relevant policy requirements in either regard, neither is a relevant planning consideration.

51. In the context of the appeal scheme as a whole, it seems to me that the proposed retail unit could potentially provide a useful, small-scale local service, not only for future occupiers of the proposed development itself, but also for other residents of Birdham. As such, it would help to sustain the local community and add to its vitality. Given the small size of the proposed unit, the benefit that it would bring would be quite modest, but nevertheless, this adds a further consideration to the overall planning balance.

#### *Local housing needs in Birdham*

52. Policy 5 of the CLP sets the indicative requirement for Birdham, for the period 2012-29, at 50 dwellings. The permissions subsequently granted on four sites in the village allow for a total of 79 dwellings, which is more than sufficient to meet this requirement. Although one of these sites, at Crooked Lane, is now expected to be delayed until 2023 or later, there is no evidence that this will push the development beyond the end of the plan period in 2029; and even if that did occur, the remaining three permitted sites would still more than meet the Policy 5 requirement.
53. The Policy 5 figure of 50 dwellings is not intended to be a ceiling, and there is no policy in any plan that sets an absolute limit on development in the village. However, there is equally no identified local requirement for any further additions to the sites already permitted. In any event, Policy 14 of the BPNP, allows some scope for additional windfall sites within the village boundary. In terms of the village's own needs therefore, there is currently no requirement for any further development outside that boundary.

#### *Affordable housing*

54. With regard to affordable housing, the CLP's general requirement is for all sites to provide 30%. In Birdham, applying this percentage to the indicative requirement of 50 dwellings, this suggests a local need for about 15 of those dwellings to be affordable. When the BPNP was made, planning permissions for 79 units in the village had by then been granted, and based on those permissions it was expected that 37 of these units would be affordable. However, the plan makes it clear that only 15 of these would be subject to a 'local lettings policy', thus reflecting a scale of local need in Birdham itself that accorded with the original indicative target derived from CLP Policy 5. There is no evidence to suggest that the need for affordable housing in Birdham has ever been found to exceed 15 dwellings.
55. Subsequently, the number of affordable dwellings required at the Rowan Nursery site has been reduced by 3 units, and the delay to the Crooked Lane development means that the 15 affordable units proposed on that site will not be delivered as early as previously expected. But there is no evidence to suggest that the village's need for 15 affordable dwellings cannot be met, and indeed comfortably exceeded, within the plan period.
56. As regards the position across Chichester District as a whole, there is no clear evidence. In a previous local appeal<sup>7</sup>, heard in June 2017, it was apparently

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<sup>7</sup> APP/L3815/W/16/3165228, Land at the corner of Oving Road and the A27, Chichester

agreed by the Council that affordable housing had not kept pace with need. But in the present case, that point is not common ground, and no further evidence has been brought forward that would enable me to form any similar conclusion. Whereas, on the other hand, I have found that the District now has sufficient land to meet its general housing requirement, at least for the time being, and has policies in place to secure the required proportion as affordable housing. In the absence of any other evidence, I have no reason to believe that the required level of affordable housing cannot be achieved over the plan period.

57. In the development now proposed, 23 of the dwellings would be affordable, meeting the 30% required by CLP policies. There is no doubt that this affordable element is to be welcomed, and must therefore be counted as a benefit, weighing in favour of the appeal. But in view of the lack of any clear evidence of a need to increase the existing and planned provision, either at local or district level, I can give this benefit only limited weight.

#### *The SPA and mitigation*

58. The appeal site lies within the 5.6 km buffer zone around the Chichester and Langstone Harbours SPA, which is protected under the Habitats Regulations. The proposed development would have the potential to contribute, in combination with other developments in the area, to a significant indirect adverse impact on the SPA's integrity, through recreational disturbance.
59. However, the appeal is accompanied by a shadow Appropriate Assessment, carried out by the Council, in consultation with Natural England. The assessment concludes that the scheme's adverse effects could be adequately mitigated by means of a financial contribution to the Council's 'Bird Aware' scheme for the area. Having had regard to the contents of the assessment, I agree with this conclusion. The contribution provided for in the S.106 agreement meets this requirement, and would therefore fully mitigate the development's effects on the SPA.

#### *Other considerations*

60. From all the evidence before me, I am satisfied that the provisions of the S.106 agreement meet the relevant legal and policy tests for planning obligations. I have therefore taken the contents of the agreement into account in reaching my decision. In addition to the provisions discussed elsewhere in this decision, the proposed new pedestrian and cycle path, the new bus lay-bys, and the public open space and play area, would all be of some benefit to the local community, over and above the need to mitigate the development's own impacts. These add some further weight in favour of the appeal.
61. There is no dispute that the site is close to the existing facilities in Birdham. Those facilities are not very numerous, but they do include a primary school, convenience shop, village hall and recreation ground. Bell Lane is also served by existing bus services. The opinion surveys carried out for the BPNP did not appear to show any strong public objection to development in this part of the village. However, these matters do not outweigh the policy objections that I have identified.
62. I note the various matters raised by local residents relating to traffic, drainage, flood risk from surface and ground water, and waste water treatment capacity.

However, none of the relevant statutory bodies has objected. In the absence of further evidence, and in view of my conclusions on the main issues discussed above, I do not propose to pursue these matters in any further detail.

## **Conclusions**

63. The appeal proposals would be contrary to the locational strategy for housing, and the approach to development in the countryside, jointly embodied in Policies 2 and 45 of the CLP and Policies 13 and 15 of the BPNP. It would also conflict with the aim of protecting Birdham's horticultural industry, as required by BPNP Policy 23. These are the principal relevant policies relating to the proposed development as a whole. The scheme therefore fails to accord with the development plan.
64. A 5-year supply of housing land has been demonstrated, and none of the relevant policies have been shown to be out-of-date or inconsistent with the NPPF. There is therefore no reason for me to give any of these policies less than full weight, or to apply the 'tilted balance' in NPPF paragraph 11.
65. The proposed new housing, both affordable and open-market, and the B1 and retail units, would all bring some potential social and economic benefits for the local community. So too would the S.106 provisions for the footpath/cycleway, bus lay-bys, open space and play facilities. But on the other hand, the site is not within the areas where development on this scale is permitted, and no exceptional need has been established. The scheme would therefore cause harm not only to the planning strategy for the area, but also to the principle of plan-led decision-making, which is central to the NPPF and to the whole planning system.
66. The development would cause little harm to the area's character or appearance, and would be reasonably well located for access to some local facilities. These considerations would carry some weight, if there were a need to find a suitable location for a development of this type. But in the absence of such a need, they add nothing to the matters set out above; their effect on the overall balance is therefore neutral.
67. The potential benefits arising from the proposed scheme are numerous, but nevertheless, even when these are all added together, they are not compelling. In the absence of a proven need, the considerations in favour of the development do not outweigh the harm due to the conflicts with the development plan.
68. I have taken account of all the other matters raised, but none changes these conclusions. The appeal therefore fails.

*J Felgate*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Gwion Lewis

Of Counsel  
(instructed by Keystone Law)

He called:

Ms Melanie Burgoyne  
MA(Cantab)

Economic Development Services Manager

Mr Jeremy Bushell  
BA(Hons) DipTP MRTPI

Principal Planning Officer

Mr Alex Roberts  
BSc ARTPI

DLP Planning

### FOR THE APPELLANT:

Ms Jenny Wigley

Of Counsel  
(instructed by Ms N Golding, Principal Solicitor to the Council)

She called:

Mr Nigel Jacobs

Intelligent Land, Chartered Surveyors and Town Planners

Mr Jonathan Jarman  
BA(Hons) DipTP

Bell Cornwell Chartered Town Planners

### FOR THE RULE 6 PARTY:

Cllr Laurence Pocock

Chairman, Birdham Parish Council

### OTHER INTERESTED PERSONS:

Cllr Robert Carey

Chairman, Earnley Parish Council

Mr Carey McKinnon

Local resident

## DOCUMENTS

### JOINT DOCUMENTS

- JT/1 Agreed note on Chichester Harbour SPA
- JT/2 Habitat Regs Screening Matrix and Appropriate Assessment Statement
- JT/3 Pins Note 05/2018: 'Consideration of avoidance and reduction measures in HRA'
- JT/4 [2015] EWCA Civ 683: Friends of the Earth v Forest of Dean DC
- JT/5 Revised Statement of Common Ground on 5-Year Supply of Housing Land, dated 5 October 2018
- JT/6 Agreed note on Section 106 Agreement provisions
- JT/7 Signed Section 106 agreement, dated 11 October 2018

### THE APPELLANTS

- AP/1 Marketing brochure for industrial unit at Glenmore Business Park
- AP/2 Horticulture Week articles dated 28 March and 3 April 2018
- AP/3 Batch of emails relating to enforcement action at Kelly's Nursery
- AP/4 Officers' report re South Downs Holiday Park site
- AP/5 Extracts from Chichester Housing and Economic Land Availability Assessment (HELAA), August 2018
- AP/6 Land west of Chichester/Centurion way (site 16): email from M Hewitt dated 27 Sept 2018
- AP/7 Land at Highgrove farm (site 68): extract from HELAA, and site layout plan
- AP/8 Email from S Thixton dated 27 sept 2018, re Barratt completions rate at East Beach Walk, Selsey
- AP/9 Land at Shopwhycke Road (site 34): planning permission Ref O/11/05283/OUT
- AP/10 Updated versions of Mr Jacobs' Appendices 2 and 3, received 5 October 2018
- AP/11 Closing submissions

### THE COUNCIL

- CN/1 Opening submissions
- CN/2 Documents relating to enforcement matters at Kelly's Nurseries:
  - o Email from J Bushell dated 28 September 2018
  - o Enforcement Notice (EN) against car wash, 13 December 2017
  - o EN against erection of a building, 11 July 2018
  - o EN appeal acknowledgement letter dated 3 September 2018
- CN/3 Definition of 'agriculture' ( TCPA 1990, S.336(1))
- CN/4 Definition of 'farm shop' (Oxford Dictionary)
- CN/5 Land at Shopwhycke Road (site 34): Highways England letter dated 25 July 2018
- CN/6 Land at Shopwhycke Road (site 34): S.73 application for variation of conditions, dated 7 Sept 2018
- CN/7 Land at Kirdford Growers (site 59): email from P White dated 4 October 2018
- CN/8 Land N of Stane Street, Madgwick Lane (site 52): email dated 25 Sept 2018 from T Whitty
- CN/9 Land N of Stane Street, Madgwick Lane (site 52): approval of reserved matters ref WH/18/01024/REM, and officer's note from M Bleakley dated 4 Oct 2018
- CN/10 Land N of Stane Street, Madgwick Lane (site 52): S.106 agreement, 4 Oct 2018
- CN/11 Closing submissions

### OTHER PARTICIPANTS

- OP/1 Cllr Pocock's final submission for Birdham PC
- OP/2 Cllr Carey – speaking notes
- OP/3 Map of main roads serving the area (tabled by Cllr Carey)
- OP/4 Appeal decision APP/L3815/A/14/2219554: land S of Clappers Lane (Cllr Carey)