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## Appeal Decision

Hearing Held on 12 November 2019

Site visit made on 12 November 2019

**by David Murray BA (Hons) DMS MRTPI**

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

**Decision date: 17 December 2019**

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**Appeal Ref: APP/U1430/W/18/3215252**

**Former Sidley Sports Ground, Glovers Lane, Bexhill, East Sussex, TN39 5ER.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Beaulieu Homes (Southern) Ltd. against the decision of Rother District Council.
  - The application Ref. RR/2018/274/P, dated 12 January 2018, was refused by notice dated 2 May 2018.
  - The development proposed is the development of part of existing disused sports field for up to 54 dwellings, and the re-siting and relaying of an existing grass playing pitch. Access, roads, footpaths, garages, car parking areas, open space and ancillary development.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The application is in outline format and the only detailed matter to be considered at this stage is the proposed access to the development site. All other details are reserved for future consideration. Therefore, I have treated the plans showing the layout of the development and other details as for indicative/illustrative purposes only.
3. A Planning Obligation Unilateral Undertaking (UU) made under section 106 of the Act was discussed at the Hearing although a final version of the document was not submitted until after the Hearing. This is dated 2nd December 2019 and is signed by the developer, land owner and mortgagee and is made to Rother Council and East Sussex County Council. In general terms the UU covenants the owner and developer to: make provision for affordable housing; the provision of green infra-structure and facilities; and highway improvements. I have had regard to this UU as a material consideration.

### Main Issues

4. The main issues are:
  - Whether new housing development in principle accords with the development plan in the context of housing land supply;

- The need and provision of open space, sports/social/community facilities locally and whether the site is surplus;
- Whether the loss of the facility would be adequately replaced/improved;
- Whether there is a reasonable prospect of other community facilities being suitable or viable;
- The effect on the character and appearance of the area and whether the scale of development proposed can be properly accommodated on site; and
- The effect on flood risk especially from surface water.

## **Reasons**

### *Background*

5. The appeal site is an area of grassed land roughly square in shape and extending to about 2 ha which lies in the mainly residential suburb of Sidley about 2km from the centre of Bexhill. For many years the site (also known as Gullivers Sports Ground) was the sports ground of Sidley United Football Club but that club went into administration in 2013 and the site has fallen into disuse and the modest buildings have been trashed. The site was bought by the appellant company in 2015. Moreover, the land was designated as an Asset of Community Value (ACV) in 2018. In essence, the appellant's outline scheme is to build up to 54 dwellings on about half of the appeal site and the remainder, about 1ha, would be levelled, laid out as a football pitch and gifted to Sidley United FC.

### *Policy context*

6. At the time of the Hearing the development plan included some saved policies from the Local Plan adopted in 2006, and the Council's Local Plan – Core Strategy adopted in 2014, now referred to as CS.
7. The Council is also preparing the Development and Site Allocations Local Plan (DaSA) pursuant to the CS. This was subject to Examination earlier in 2019 and the Council consulted on Main Modifications for a period expiring on the 10 September 2019. The Examining Inspector has considered the representations made and issued his Report on the 5 November 2019 and published this along with the Main Modifications (MM) put forward by the Council. The Inspector found that with the MM the plan would be sound and capable of adoption. The planning officers expect to present the modified DaSA to the Council on the 16 December 2019 with a recommendation that the plan be adopted.
8. In terms of housing land supply, the Council accepts that it cannot currently demonstrate a five year supply of deliverable housing sites and that only a 3.7 year supply existed as at 1 April 2019. Therefore, at the moment, the proposal should be considered under paragraph 11(d) of the National Planning Policy Framework (NPPF).
9. However, I note that the Examining Inspector found that the allocations in the DaSA together with neighbourhood plans would equate to around 2,171 dwellings over the plan period, against a residual requirement of around 1,637 dwellings taking account of completions, sites with planning permission and

allowances for small and exception sites. Thus, he found that 'the overall housing supply and delivery assumptions within the DaSA are justified, effective and accord with the CS'<sup>1</sup>. I would therefore expect that after the DaSA is adopted, the Council would reasonably be able to demonstrate an adequate supply through a recently adopted development plan and accord with paragraph 74 of the NPPF on maintaining that supply and delivery.

10. The relevant DaSA policy concerning the principle of development at the appeal is BEX11 which relates solely to the Sidley Sport and Social Club site; i.e. the appeal site. The policy allocates all of the land for playing pitches for formal sport and ancillary changing facilities, a community hub and open space. The Examining Inspector concluded that there was a reasonable prospect of the site being delivered for the purpose set out in Policy BEX11 and that the policy was justified and effective, and is sound.
11. As the Examining Inspector's Report was sent to the appellant's agent on the evening before the Hearing, she was given the opportunity to make subsequent representations after the Hearing and the Council were advised of the subsequent submissions and commented on them. I have taken account of all of these representations.
12. It is stated on behalf of the appellant that while the site is an ACV the owner gave notice of the proposed disposal of the asset in February 2019 but the subsequent moratorium periods have now passed without any community organisation raising the money to buy the asset. The agent says that now the owner is able to sell the site to whoever they wish at a price they wish. The appellant considers that the Examining Inspector's conclusion that there is a reasonable prospect of the site being delivered as proposed by BEX11 to be incomplete and misleading.
13. Notwithstanding these further comments, which primarily appear to relate to the ACV process concerning the sale of the site, although the DaSA has not been adopted by the Council at the time of my reporting on this case, I agree with the Council that given the likely imminent adoption following the statutory plan-making process, Policy BEX11 should be given full weight.

*Whether the principle of new housing development accords with the development plan*

14. The appeal site lies within the recognised settlement boundary of Bexhill where the principle of new residential development would normally be acceptable subject to site specific policies in the development plan that restrict development. In this case, the relevant CS policies deal with the potential loss of sports and recreation provision, as in Policy CO3(i), and the loss of sites or premises currently or last used for community purposes, as dealt with in Policy CO1(iii), together with Policy BEX11 from the DaSA.
15. At the Hearing I raised the issue of whether the sports ground use at the appeal site contained a community use or whether it was just a private sports club with limited changing room facilities. However, from the evidence given by local people and my observations at the site visit, I am satisfied that before it closed there was a significant community use of the facilities at the ground

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<sup>1</sup> As set out in paragraph 111 of the Examining Inspectors Report

separate from the changing rooms, and that the club house was widely used by the public. CS Policy CO3 therefore applies.

16. These policies on the safeguarding of community and sport and recreation facilities are also consistent with the NPPF. This sets out in paragraph 92(g) that planning decisions should guard against the unnecessary loss of valued community facilities particularly where these would reduce the communities' ability to meet its day to day needs. In respect of sport and recreation, paragraph 97 of the NPPF advises that existing open space, sports and recreation buildings including playing fields should not be built on unless it is shown that three criteria are met.
17. The tests set out in the policy and relevant NPPF aspects can be summarised as: whether the loss of the local facility by development is replaced by equivalent or better facilities in terms of quantity and quality, or there is not a reasonable prospect of other community uses. I will consider these aspects under the next main issues.
18. Turning to the application of Policy BEX11, the accompanying Policies Map indicates that this applies to the whole of the appeal site and there is a presumption within the policy that all of the land will be used for playing field purposes together with a community hub and open space. The policy does not open up scope for a mixed development with housing and therefore the proposed scheme conflicts with this policy allocation.
19. I conclude on this issue that while the principle of new residential development is generally acceptable in the built up area of Bexhill, the proposal for a mixed development of up to 54 houses and a re-sited pitch, and ancillary development as specified, would conflict with the allocation set out in the DaSA, notwithstanding the further policy requirement to retain essential sport and community facilities unless shown to be adequately replaced.

*Whether any loss of facility would be adequately replaced*

20. This issue needs to be seen in the context that there is a deficiency in the provision of both open space and outdoor sport facilities in Bexhill. The recent studies referred to by the Council indicate that there is about a 50% deficiency in provision when compared to recognised standards and one of the assessments would have taken account of the Sidley ground when this was operational. Therefore, the evidence shows that the open space/sports facility of the appeal site ground is not surplus to requirements and the test in 97(a) of the NPPF on existing open space and sport and recreation land is not satisfied.
21. Turning to replacement provision this needs to be looked at in terms of open space, playing field and community facilities, however, the Council now accepts that is not necessary to consider the need for a cricket pitch. It is the appellant's case that the appeal scheme would actually deliver soon a new football pitch for the club along with other facilities.
22. There is conflicting evidence about whether the previous football pitch at the ground was of a reasonable standard. The appellants say that it did not meet the requirements for a 'Step 7' pitch, (the Football Association standard that Sidley United play at) but that the new pitch would. The Council and local people dispute the deficiencies in the old facilities and say that the new pitch

- would not be of an adequate standard. In particular, they highlight that it would be orientated on a north-south axis rather than an east-west one and it would therefore not meet the recommendations of Sport England and the main football bodies on pitch layout.
23. It seems to me that while the new grass pitch proposed meets the minimum standards of a 'Step7' pitch the one proposed would be likely to be very restricted in its setting on site. The illustrative layout plan shows no provision for a replacement small covered grandstand as it existed before and I have no reason to doubt that the axis of the pitch would be fundamentally wrong in practical terms. Moreover, the pitch would have to be sited very close to the housing with the illustrative layout plan showing only a gap of less than 10m between the bye-line of the pitch and the outer-wall of flats. In my view the environs of both the playing field and the housing area would be severely constrained by the close proximity of the other development.
24. Turning to the other facilities, in addition to the playing field/spots provision the scheme also needs to address the loss of the community facility, but it is not clear to me what facilities would actually be included as replacement ones. I appreciate that the outline proposal is only dealing with the principle of development and site access, but this along with a linked Planning Obligation (UU) has to be reasonably certain about what is in the package rather than be left to the detailed/reserved matters stage.
25. The UU indicates that the 'facilities' to be provided by the development includes sports changing rooms and ancillary space, together with green infrastructure which includes the pitch and facilities, ground works, including a play scheme, together with a commuted sum for maintenance. However, the scheme put forward does not adequately replace the community facilities that previously existed on site prior to the demise of the football club either in terms of the floorspace of the building or in better facilities or equipment.
26. Overall on this issue I find on the evidence submitted even if the proposed football pitch makes alternative provision for sport and recreation in quantitative terms, the proposal has not been shown to make adequate alternative provision in qualitative terms. Similarly, there is a lack of quantitative or qualitative replacement provision for community facilities. Moreover, the extent of open space land would be reduced by half. Therefore, I find that the proposal also conflicts with policy CO1 (iii)(a) and Policy C03 (i) of the CS as well as the guidance in paragraphs 92 (c) and 97(b) of the NPPF.

*Whether there is a reasonable prospect of other community facilities being suitable or viable*

27. The Examining Inspector concluded on the evidence put to him that there is a reasonable prospect of the site being delivered for the purpose set out in Policy BEX11 – that is all of the land being used for sport, recreation and community purposes. The appellant's submissions post the Hearing say that the Inspector's conclusions are now out of date as there has not been a credible approach from the community to buy the site within the periods set out in the regulations governing the ACV.

28. Nevertheless, I have also taken account of the documents submitted by the Heart of Sidney/4Global<sup>2</sup> where they say that the public consultation exercise indicates that the local community support the re-establishment of football facilities on site with a 3G full size pitch and ancillary building together with a community hub building, open space and children's play facilities. The accompanying business plan sets out options as to how the facility could be delivered and operated by a 'community interest company' and potential sources of funding.
29. However, I have to treat these plans as aspirational as there is not a clear picture that they will be achieved. Also, I understand that the land owner has not been invited to participate in the formation of the scheme. To be delivered the land would need to be bought from the present owners but Mr Killoran said that he had dismissed an approach made by Heart of Sidney to the company to buy the site as the price offered was said to be wholly unrealistic. There is also no evidence that any party would be likely to use compulsory purchase powers to obtain the site.
30. While the alternative scheme presented by Heart of Sidney appears well-considered I have considerable doubt about its deliverability given the landowners apparent refusal to sell the site. Accordingly, I find that there is only a limited prospect at the moment of alternative sports and community being deliverable or viable on the site.

*Whether the scale of development can be properly accommodated on site*

31. The Council takes issue with the quantum of development shown on the illustrative layout plan and considers that this would have a harmful effect on the character and appearance of the area.
32. I acknowledge that the proposal is in outline format and only the details of the access to the site are to be considered at this stage. Nevertheless, the proposal is for the erection of up to 54 dwellings, rather than broadly for 'residential development', and I have to be satisfied that this scale of development is reasonably capable of being delivered on site at the detailed matters stage.
33. I referred in paragraph 23 above to the likely close proximity of the housing to the proposed football pitch and that this close relationship was likely to result in both uses being very constrained by the other.
34. The Council objects to the principle of three storey residential buildings but I saw other relatively new three storey flats close by the site and I do not consider that there is an objection in principle to such scale of building on local amenity grounds as harmful to the prevailing character of the area. However, the relationship between the proposed housing and the existing dwellings around the southern and western boundaries of the site appears very cramped with little space available for landscaping and boundary treatment. I also share the Council's concern about the lack of parking put forward and how normal parking provision could be well integrated into a well-designed development.

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<sup>2</sup> Public consultation on the future use of Gullivers Sports Ground (Nov 2018) and Sidney Sports Ground- Business Plan (July 2019).

35. Overall on this issue I share the Council's concerns about of the totality of this mixed development being accommodated on the site in an acceptable manner at the detailed stage without have an imposing, 'crammed-in' and harmful effect on the character and appearance of the area in the long term. This reduces the weight that can be given to the appellant's case that the whole development is reasonable and necessary to ensure the adequate replacement of the existing sporting and facilities

*The effect from flood risk especially from surface water*

36. Although not a formal reason for refusal raised by the Council, representations from East Sussex County Council on behalf of the Lead Local Flood Authority<sup>3</sup> (LLFA) raise objection to the scale of development proposed as there is not capacity in the existing surface water sewer in the vicinity of the site to cope with the anticipated water run-off from the development. The Flood Risk Assessment (FRA) submitted with the application had proposed a strategy of controlling the run-off from the site via a small pond on site, the location of which had still to be determined. However, this solution was not considered acceptable in principle by the LLFA.
37. The appellant has commissioned further work (FRA Addendum No.1 dated Nov 2019) and this recommends that the surface water from the development would be connected to the existing (Southern Water) surface water sewer (SWS) system starting in Ingrams Avenue and then heading towards Glover Lane. On behalf of the appellant Mr Guma advised at the Hearing that the developer would be responsible for surveying and implementing upgrades to the SWS to ensure adequacy in capacity. The parties at the hearing were not able to give a final updated response from the LLFA but it appears to me that the technical assessment reasonably indicates that the drainage of the development proposed can be undertaken in an acceptable manner, without causing additional flood risk by undertaking improvement work on and off site. This improvement work can specified in a 'Grampian' condition if outline permission is to be granted.

*Planning balance*

38. The appeal is considered under paragraph 11(d) of the NPPF as the Council cannot demonstrate a five year housing land supply at the moment. However, this position is likely to change soon with the imminent adoption of the DaSA.
39. On the main issues I have found that the housing element of the proposal conflicts with the provisions of DaSA Policy BEX11. Notwithstanding the appellant's updated comments about the lack of explicit interest from the local community in buying the site, this policy should be given full weight given its scrutiny through the formal plan making process and its very advanced stage before adoption.
40. The proposal also conflicts with the relevant CS Policies C01 and C03 together with the relevant provisions of the NPPF as it has not been demonstrated that the open space and recreation and community facilities are surplus or that the proposal would be a reasonable replacement in either qualitative or quantitative grounds.

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<sup>3</sup> By letter dated [] and 11 November 2019.

41. The housing element proposed in the redevelopment of the site would therefore conflict with the relevant provisions of the development plan and relevant national guidance when these are both read as a whole.
42. Although it is an outline application, I share the Council's concerns that the quantum of development proposed would be unlikely to all fit on the site as a reasonable form of development at a reserved matters stage.
43. In terms of the actual delivery of an alternative football pitch I have placed considerable weight on the appellant's position that the mixed development with housing is the only realistic practical alternative put forward to achieve this soon. Further, a substantial proportion of the housing is intended to be affordable housing and the number of units proposed is above the local policy requirement. To be balanced with this is the limited weight I have to give to the local community aspirations for recreation and community uses that accord with BEX11 as I have doubts over the deliverability of this scheme in the short to medium term.
44. Nevertheless, this practical benefit of securing a limited replacement pitch soon has to be considered in the wider context that with the likely imminent adoption of the DaSA the provision of housing in the district will be well planned for to meet and probably exceed the strategic requirements. Therefore, I place much weight on the long term opportunity for this site to be used for sport, recreation and open space purposes to help alleviate the recognised existing deficiency of provision locally.
45. In terms of the NPPF I find that the proposal conflicts with the guidance to protect open space, recreational and community facilities and this outweighs the contribution to housing supply that would arise now. I conclude that the proposal conflicts with the NPPF when this is read as a whole.
46. Overall, I find that the benefits of the scheme and the contribution to housing land supply that would arise with the housing element in the proposed scheme, and the other benefits, are not so great that they outweigh the adverse impacts and the clear conflict with the terms of the development plan. This indicates that outline planning permission should not be granted.

## **Conclusion**

47. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

|                                          |                                    |
|------------------------------------------|------------------------------------|
| Mrs L Alexander BA (Hons) MPhil<br>MRTPI | Associate, Bell-Cornwell Planning. |
| Mr G Guma                                | Odyssey Consulting Engineers.      |
| Mr C Killoran                            | Director, Beaulieu Homes.          |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                               |                                                              |
|-------------------------------|--------------------------------------------------------------|
| Mrs S Shepherd MRTPI BA(Hons) | Development Management Team Leader, Rother District Council. |
| Mrs N Watters                 | Planning Policy Manager, Rother District Council.            |
| Mr S Lavocah                  | Contracts Manager, Rother District Council.                  |
| Mrs C McGough                 | Solicitor, Rother District Council.                          |

### **INTERESTED PERSONS:**

|               |                       |
|---------------|-----------------------|
| Mrs H Bridger | Heart of Sidley group |
| Ray Eldridge  | Sidley Football Club  |
| Mr K Crook    |                       |
| C Bird        |                       |
| M Freidson    |                       |
| W Harrison    |                       |
| R Settles     |                       |

## **DOCUMENTS HANDED IN JUST BEFORE OR AT THE HEARING**

- 1 Agreed Statement of Common Ground.
- 2 Copy of letter dated 5 July 2019 from Rother Voluntary Action
- 3 Copy of letter dated 11 November 2019 from Flood and Water Officer, East Sussex County Council.
- 4 Copy of Sidley Sports Ground, Business Plan dated July 2019 and Heart of Sidley public consultation on future of sports ground – project summery report and recommendations Nov 2018.
- 5 Copies of appeal decisions APP/U1430/W/17/3191063 and APP/U1430/W/17/3191063.
- 6 Letter from Mrs Alexander at Bell Cornwell dated 22 November 2019 re updated comments on Inspectors report and Business Plan for Sidley Sports Ground prepared by Heart of Sidley.
- 7 Letter from Rother Council dated 2 December 2019 re appellant's additional representations.