

---

## Appeal Decision

Site visit made on 20 January 2020

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

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

**Decision date: 25 February 2020**

---

**Appeal Ref: APP/C3810/W/19/3234972**

**Clays Farm, North End Road, Yapton BN18 0DT**

- 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 Domusea Developments Ltd against the decision of Arun District Council.
  - The application Ref Y/62/18/OUT, dated 12 July 2019, was refused by notice dated 28 June 2019.
  - The development proposed is described as residential development comprising 33 no. units, access, landscaping and associated works.
- 

### Decision

1. The appeal is allowed and outline planning permission is granted for residential development comprising 33 no. units, access and associated works, at Clays Farm, North End Road, Yapton BN18 0DT, in accordance with the terms of the application ref Y/62/18/OUT, dated 12 July 2019, and the conditions set out in the schedule at the end of this decision.

### Procedural Matters

2. The application was made in outline with permission sought for access, and details of landscaping, scale, layout and appearance reserved for future consideration. Insofar any of these details have been shown on the submitted plans I have therefore treated them as indicative.
3. The description of development includes 'landscaping', despite this being listed as a reserved matter. As the appellant has confirmed that the scope of the application does not include landscaping, and given that this was the basis upon which the Council assessed the application, I have omitted this from my decision above.
4. The Council cited Policy H1 of the Yapton Neighbourhood Plan 2014-2029 (the NP) in its decision, however it has confirmed that this was an error and that Policy E1 should have been referred to instead. Policy E1 is however partly interpreted with reference to Policy H1, and the appellant has considered both. Therefore no prejudice will arise through my consideration of Policy E1 of the NP as requested by the Council.
5. The Council confirmed during the appeal process that it no longer wished to defend its decision given that it had resolved to approve a resubmission of the same scheme subject to submission of a planning agreement (S106). I have been provided with no indication of whether this subsequently occurred. A

S106 has however been submitted in relation to the appeal scheme, which I have considered within my reasons below.

6. An application for costs was made by Domusea Developments Ltd against Arun District Council. This application is the subject of a separate Decision.

### **Main Issue**

7. The main issue is the effect of the development on agricultural land.

### **Reasons**

8. When the Council determined the application it considered that the site was Grade 1 agricultural land. It has however conceded at appeal that the site should be classified as Grade 2 agricultural land. This is nonetheless land of very good quality on which a wide range of agricultural and horticultural crops can usually be grown.
9. Policy SO DM1 of the Arun Local Plan 2011-2031 Adopted 2018 (the LP) prevents the use of Grades 1, 2 and 3a of the Agricultural Land Classification for any form of development other than agriculture, horticulture or forestry unless it meets a number of criteria. None are applicable in this case. Policy SO DM1 of the LP is broadly consistent with paragraph 170(a) of the National Planning Policy Framework (the Framework), which states that both policies and decisions should contribute to the protection and enhancement of soils, and footnote 53 of the Framework, which states that in relation to development of agricultural land, areas of poorer quality should be preferred to those of a higher quality.
10. The site largely consists of the rectangular plot of land currently subdivided as horse paddocks. The equestrian use of the site appears to be well established, and is supported by a number of buildings including stables. The land is not therefore currently in use for the growing of crops, and the appellant further states that it has not been used for agricultural purposes for more than 40 years. This is not disputed by the Council.
11. Land towards the east of the site is in use for growing crops. There appears to be nothing in principle preventing cultivation of the site itself, and the current equestrian use makes no fundamental difference to the grade of the soil. I have however been provided with no reason to believe that cultivation of the site would be likely in the event that the appeal was dismissed. Whilst this does not in itself justify the loss of the land, it does act to reduce the level of environmental and economic harm that would be caused by its development. In this regard I consider that the development would cause moderate harm in each regard due to the loss of Grade 2 agricultural land.
12. I acknowledge that sites to the north and south which appear to be in uses similar to that of the appeal site, and whose soil is of the same grade, have been recently approved for development. Whatever the justification was in these cases however, these approvals do not provide direct justification for the loss of Grade 2 agricultural land which would occur on the appeal site.
13. I note that Policy SO DM1 of the LP additionally states that development will not be permitted unless it is supported by a soil resources plan, and associated appraisal and mitigation measures. The Council has indicated that these can be secured by condition, and I agree. This would not however alter the level of

harm that would be caused by the development given that the land would no longer be available for agricultural use.

14. As set out above, the Council intended to cite Policy E1 of the NP in its decision, which states that planning permission will be refused for development on Grade 1 and Grade 2 agricultural land unless meeting one of the exceptions it outlines. One of these is conformity with Policy H1 of the NP, which was itself cited in the decision, and which sets out the local housing requirement.
15. The parties disagree over whether or not the local housing requirement figure of '100' set out in Policy H1 should be considered fixed. In my view the policy cannot be properly interpreted unless it is treated as a baseline given that it goes on to reference a '20% buffer'. In any case the policy allows for a development above and beyond this 20% buffer subject to its impact on Yapton CS Primary School (the PS).
16. In this regard the County Council (CC) states that a financial contribution would be required towards both the PS and a local secondary school in order to mitigate increased demands. This has been calculated by assessing the capacity of the schools, the projected population increase based on committed developments, the costs of provision per pupil, and pupil yield by dwelling type. It would be finalised once the number of dwellings has been fixed, and the likely level of occupancy is known. The contribution would be utilised to expand and improve the 2 schools, each of which is likely to be used by future occupants of the development. I am therefore satisfied that the requested contribution would pass the tests set out in paragraph 56 of the Framework and paragraph 2 of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the relevant tests). Thus the development would not conflict with Policy E1 of the NP.
17. For the reasons outlined above I nonetheless conclude that the development would cause moderate harm due to the loss of Grade 2 agricultural land, which would conflict with Policy SO DM1 of the LP, whose terms are outlined above.

## **Other Matters**

### *Location*

18. The Council's committee report states that the location of the development would conflict with Policy SD SP2 of the LP, which seeks to direct development to within built-up area boundaries (BUABs). It also identified conflict with Policy C SP1 of the LP, which requires that development outside BUABs meets the requirements of other LP policies.
19. The Committee report however notes that the site is largely bounded by the BUAB. It also notes that the development would cause no harm to the character and appearance of the area, and that the location is sustainable with regard to access to schools, shops and services by means other than the car. In these terms, development within the location in question would cause no identifiable harm. Whilst the report goes on to consider other matters, the absence of harm clearly indicated that development at the location in question would be acceptable despite conflict with the above policies.
20. This matter was not subsequently revisited in the context of the Council's refusal of planning permission, and does not form a reason for refusal. It is also not otherwise specifically covered within the Council's appeal statement.

As such, I consider that the Committee Report represents the Council's position on this matter. This indeed appears to be borne out by the Committee's subsequent resolution to approve the resubmitted application. Either way I see no reason to reach a different view regarding the suitability of the location, particularly on account of its good physical and spatial relationship with the broader settlement, and approval of other developments to the north and south of the site. Insofar as the Parish Council (PC) has nonetheless drawn attention to Policy BB1 of the NP, which restricts development outside BUABs, this policy defers to Policy H1 of the NP, compliance with which has been established above.

*Affordable housing, public open space and local services*

21. Policy AH SP2 of the LP sets out a requirement for 30% of dwellings on developments of more than 11 units to be affordable, in accordance with a tenure split also set out within the policy. Figures from March 2019 show that there were 922 households on the Council's housing register, indicating a high level of local need for affordable housing, and thus justifying the level sought. The provision of 30% affordable housing has been secured within the submitted S106, which I am satisfied passes the relevant tests.
22. Policy OSR DM1 of the LP sets out a requirement for developments to contribute towards open space provision. This policy has been interpreted with reference to guidance produced by Fields in Trust (FIT) rather than local guidance, given that the latter is itself based on superseded guidance produced by FIT. In this regard the size of the development generates a need for LAP and LEAP provision, as well as a minimum level of outdoor space. Scope exists for this space to be identified through clearance of the reserved matters, but the provision and status of public space would itself be secured by the S106, which additionally sets out arrangements for its transfer and the linked payment of a maintenance contribution. Public open space within the development would make a necessary contribution to the health and wellbeing of its future occupants. I am therefore satisfied that these provisions of the S106 pass the relevant tests.
23. Policy INF SP1 of the LP sets out the requirement for proposals to provide or contribute towards the infrastructure and services needed to support development. On this basis the CC has indicated a requirement for the scheme to make financial contributions towards education and library provision within the area, and towards the fire and rescue service. The NHS has additionally indicated a requirement for a financial contribution towards local health service provision.
24. The financial contribution towards local education provision has been considered above. The library contribution has been calculated on the basis of the costs of meeting the recommended level of library provision by population, using a formula much the same as that employed for the education contribution. The contribution would be spent on the library in Arundel, which serves the locality and which would be likely to see use by future occupants of the development. I am thus satisfied that the contribution passes the relevant tests.
25. The CC has calculated the fire service contribution on the basis of cost-per head of capital and infrastructure projects, again providing a formula for the level to be finalised at the point the future composition of the development is

fixed. The CC has indicated that the contribution would be spent on projects in the parish, making specific reference to anti-ventilation and ultra high pressure equipment. Its use would serve future occupants of the development as members of the broader community. I am therefore satisfied that the contribution passes the relevant tests.

26. The NHS has calculated the healthcare contribution based on the costs of servicing the need generated by the future occupants of the development, understood in terms of the resulting surgery space requirements. Unlike CC contributions, the healthcare contribution has been calculated on the basis of the composition of the development as indicated within the application. Though this could in theory change, I have been provided with no indication that this is likely. The contribution would be spent on improving facilities at the GP's Surgery serving the area within which the development would be located, and thus again likely to be used by future occupants. I am therefore satisfied that the contribution passes the relevant tests.
27. The S106 also sets out arrangements for the provision, management and/or adoption of roads with the development, and payment of a monitoring fee. Notwithstanding the potential to address road construction standards by condition, and the operation of other legislation in relation to adoption, I am satisfied that provisions relating to roads provide additional security, and so pass the relevant tests. I also see no grounds to question compliance of the monitoring fee with the specific tests set out in paragraph 2A of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

#### *Prematurity*

28. The PC states that the application is premature and should be considered in the context of an updated NP. The Council does not share the PC's concern. Having regard to paragraph 49 of the Framework, which sets out the basis upon which refusal can be justified on grounds of prematurity, I see no reason to reach a different view.

#### *Protected species*

29. The presence of slow worms, which are a protected species, has been detected on site. A survey has however been undertaken which outlines mitigation measures. As these can be secured by condition, I am satisfied that no unacceptable harm would arise as a result of the development.

#### *Other concerns*

30. Interested parties have raised concerns regarding the adverse effects of increased traffic related to the development. The Highways Authority does not share these concerns. Furthermore, off-site highways improvements have been identified which can be secured by condition, as too the installation of charging points for electric vehicles, which will help to encourage use of less polluting vehicles. I am therefore satisfied that no unacceptable harm would arise in relation to increased traffic and road use.

### **Presumption in favour of sustainable development**

31. Within the context of the national objective of significantly boosting the supply of homes set out in paragraph 59 of the Framework, the Council accepts that it lacks a demonstrable 5-year supply of deliverable housing sites. Indeed, the

supply is acknowledged to have fallen to 3.7 years. Therefore the policies most important for determining the application are out-of-date, and planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal.

32. In this case the policies most important for determining the application are Policies SO DM1, AH SP2, OSR DM1, and INF SP1 of the LP, whose terms are broadly consistent with the Framework. However, no policies within the Framework that protect areas or assets of particular importance are applicable. The 'tilted balance' set out in paragraph 11(d) of the Framework is therefore engaged.
33. The development would provide up to 33 dwellings in a sustainable location, previously identified by the Council as a deliverable housing site. This would make a modest contribution towards the Council's shortfall, whilst additionally helping to address recent poor performance in housing delivery, consistent with the published Action Plan. The related social and economic benefits collectively attract moderate weight in favour of the scheme. Loss of Grade 2 agricultural land would cause moderate harm, to which I have also attached moderate weight. Consequently, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. Paragraph 11 of the Framework therefore indicates that permission should be granted.

### **Conditions**

34. The Council has requested a range of conditions which I have considered in light of the guidance set out in the Framework and Planning Practice Guidance, and with regard to the definitions of the reserved matters set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
35. I have imposed standard conditions setting out the time limit for the commencement of development, the procedure and time limit for approval of the reserved matters, and identifying the approved plans for sake of certainty.
36. In this context the Council has suggested a 2 year period within which an application for approval of the reserved matters must be made rather than the standard 3 year period. Whilst Section 92 of the Town and Country Planning Act 1990 (as amended) allows for this, in this instance the Council has provided no explanation of why a reduced period is necessary. In the absence of such justification I have imposed the standard 3 year time limit.
37. Condition 6 provides clarification of matters to be addressed within the context of the reserved matter of landscaping. This is necessary in order to ensure that any retained trees and hedges are protected during the course of construction. I have not imposed conditions relating to boundary treatments, as these fall within the scope of the reserved matters, or required submission of a landscape management plan, as open space management is covered within the S106.
38. Condition 7 requires the development to be carried out in accordance with the Reptile Presence/Absence Survey Report dated May 2019, and the ecological enhancements set out within the Preliminary Ecological Appraisal Report dated 2 July 2018 (the EA). This is in order to mitigate the impact of the development



- on protected species and biodiversity. I not however imposed a separate condition restricting works during the nesting season, as this is covered in the EA and otherwise addressed by separate legislation.
39. Condition 8 requires the provision of a soil resources plan and is required in order to help mitigate the adverse impact of the development on the high quality soil the site contains.
40. Condition 9 requires the approval and implementation of a scheme of archaeological investigation, and is necessary given the identified potential of the site to contain archaeological features. It is necessary for this to be a pre-commencement condition as the process of developing the site may destroy the archaeology present within it.
41. Condition 10 draws together a number of suggested conditions related to site drainage, requiring details of the design of a scheme of surface water drainage, and its subsequent provision, verification and management. This condition is required in order to ensure adequate drainage of the site. Though I note that a scheme has been drawn up within the submitted drainage report, the layout on which this is based is at this stage indicative. A pre-commencement condition is required as drainage requirements will need to be addressed from the outset. I have not imposed a condition requiring foul drainage arrangements to be approved, as, notwithstanding the need for network reinforcement, I have not been provided with any reason to believe that the development could not or would not be connected to the sewer network. This is a matter which can be separately addressed between the developer and Southern Water.
42. Condition 11 requires the approval of a Construction and Environmental Management Plan (CEMP). This in part meets the requirements of Highways England, and is necessary in order to limit the scope for adverse impacts on adjacent roads and residents in the surrounding area. As this condition covers hours of work, I have not imposed a separate condition relating to this matter. A pre-commencement condition is required as impacts addressed within the CEMP will begin to arise from the point of commencement.
43. Condition 12 requires the site access and visibility splays to be provided prior to other construction works being commenced. This is necessary in order to ensure safe access to the site during the course of construction.
44. Condition 13 requires the provision of electric vehicle charging points at each dwelling according to an approved scheme, a basis for which is provided by Policy QE DM3 of the LP. This is necessary in order to secure a high level of environmental sustainability, helping to limit air pollution. I have not included a requirement to permanently retain and maintain the points, as, aside from being impractical to enforce, this requirement would make no allowance for potential changes in technology.
45. Condition 14 sets out a requirement for 10% of the future energy needs of the development to be met by decentralised, renewable and low carbon energy supply systems. This requirement is set out in Policy ECC SP2 of the LP, and allowed by the Planning and Energy Act 2008. It is again required in order to secure a high level of environmental sustainability. I have not included a retention or maintenance clause as again this would be difficult to enforce, and would make no allowance for changing technology. I have also not included the alternative 'fabric first' approach suggested by the Council, as the relevant

policy requires no more than conformity with current standards. These are set out within the Building Regulations.

46. Condition 15 sets out a requirement for details of the way in which the development will be connected to the broadband network to be agreed and implemented. This reflects the requirement of Policy TEL SP1 of the LP and is necessary in order to ensure access to high quality communications.
47. Condition 16 sets out a requirement for 25% of any 1, 2 or and 3 bed dwellings within the development to be designed to comply with Building Regulations optional requirement M4(2) (accessible and adaptable dwellings). This is instead of the 'Lifetimes Homes' standard referenced by Policy H3 of the NP, taking into account the instruction within the 25 March 2015 Written Ministerial Statement dated, to interpret policies relating to access by reference to nearest equivalent national technical standard.
48. Condition 17 is imposed in order to require off-site highways improvements, the deliverability of which has not been questioned by either party. This condition has been requested by Highways England, and is required in order to mitigate the effects of increased use of the A27 arising from the development.
49. I have not included a condition relating to contamination, as no evidence has been provided that the land is contaminated, or therefore that such a condition is necessary. There is also no necessity for a detailed condition relating to the provision of lighting, as this falls within the reserved matter of appearance, or to require details of security measures. Whilst security is partly addressed within the Building Regulations, I see no reason why broader design-based security considerations cannot otherwise be assessed through clearance of the reserved matters.

## **Conclusion**

50. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), for the reasons outlined above, I find that material considerations, including paragraph 11 of the Framework, indicate that in this case my decision should be made other than in accordance with the development plan. I conclude therefore that the appeal should be allowed.

*Benjamin Webb*

INSPECTOR



## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Details of appearance, scale, layout and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place, and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: 100 Rev P01; and Figure 4.1 in the Transport Statement dated July 2018.
- 6) Details of landscaping submitted in relation to Condition 2 shall include the identification of all existing trees and hedgerows on the land that are to be retained, and how they will be protected during the course of the construction of the development hereby permitted.
- 7) The development hereby permitted shall be carried out in accordance with the reptile mitigation statement set out within the Reptile Presence/Absence Survey Report dated May 2019, and the recommendations for enhancement set out within the Preliminary Ecological Appraisal Report dated 2 July 2018.
- 8) The development hereby permitted shall not commence until a Soil Resource Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved Plan.
- 9) The development hereby permitted shall not commence until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the Local Planning Authority.
- 10) Prior to the commencement of the development hereby permitted, a scheme of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Before any details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system having regard to Defra's non-statutory technical standards for sustainable drainage systems, the hierarchy of surface water disposal systems as set out in Approved Document H of the Building Regulations, and guidance within CIRIA's SuDS Manual (or any subsequent versions), and the results of the assessment shall have been provided to the Local Planning Authority. Details submitted with the scheme of surface water drainage shall include:
  - a) a timetable for its implementation, including arrangements for verification of the scheme by an independent engineer to the Local Planning Authority, upon the scheme's completion; and,
  - b) a management and maintenance plan for the lifetime of the development, which shall include details of arrangements for adoption by any public

authority or statutory undertaker, and/or any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved scheme of surface water drainage shall be provided in accordance with the approved timetable, and shall thereafter managed and maintained in accordance with the approved management and maintenance plan.

- 11) The development hereby permitted shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide details of:
- a) the anticipated number and types of vehicle to be used in relation to the development, and the frequency of their movements into and out of the site;
  - b) arrangements, including locations, for the parking of vehicles used by site operatives and visitors during the course of the development;
  - c) arrangements, including locations, for the loading, unloading and storage of plant, materials and waste related to and generated by the development;
  - d) arrangements, including locations, for the erection of security hoarding;
  - e) measures required to mitigate the impact of construction upon the public highway, including the provision and location of wheel washing and other facilities;
  - f) measures to be employed to minimise the emission of noise (including vibration), dust and dirt generated during construction, including hours and days of work;
  - g) floodlighting, including location, height, type and direction of light sources and intensity of illumination; and
  - h) a scheme for recycling/disposing of waste resulting from demolition and construction works.

The development shall then be carried out in accordance with the approved CEMP.

- 12) The site access and visibility splays shall be provided in accordance with the details shown on the plan numbered Figure 4.1 in the Transport Statement dated July 2018 prior to any other construction works being undertaken on the site in relation to the development hereby permitted. The splays shall thereafter be retained and kept free of obstructions over a height of 0.6m above the adjoining carriageway level at all times.
- 13) Prior to the first occupation of any of the dwellings hereby permitted, a scheme detailing the provision of facilities to enable occupants to charge electric vehicles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for its implementation. The scheme shall then be implemented in accordance with the approved timetable.
- 14) Prior to the first occupation of any of the dwellings hereby permitted, a scheme detailing measures to provide 10% of the predicted future energy use of the development from decentralised, renewable and low carbon energy supply systems, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for its implementation. The scheme shall then be implemented in accordance with the approved timetable.
- 15) Prior to construction of any of the dwellings hereby permitted above damp proof course level, a scheme specifying the way which the development will be connected to the broadband network shall be submitted to and agreed in

writing by the Local Planning Authority. The scheme shall explain how the specification has taken into account the timetable for delivery of and future access to superfast broadband within the local area. The approved scheme shall then be implemented in accordance with a timetable which has first been submitted to and agreed in writing by the Local Planning Authority.

- 16) Twenty-five percent (25%) of the total number of 1, 2 and 3 bed dwellings within the development hereby permitted shall be designed and then constructed to comply with Building Regulations optional requirement M4(2) (accessible and adaptable dwellings).
- 17) Prior to the first occupation of the seventeenth dwelling within the development hereby permitted, improvement works at the junction of the A27 and Yapton Lane shown on i-Transport's drawing number ITB11324-GA-014 Rev C "Proposed extension to A27 Yapton Lane right turn" dated 30/8/17, shall be completed and open to the public.