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## Appeal Decision

Hearing held on 22 September 2020

Site visit made on 23 September 2020

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 18 December 2020**

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**Appeal Ref: APP/C3810/W/20/3246409**

**Boweries, Barnham Road, Eastergate PO20 3RT**

- 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 Edward Rees of Domusea Developments Ltd against the decision of Arun District Council.
  - The application Ref EG/22/19/OUT, dated 28 March 2019, was refused by notice dated 29 November 2019.
  - The development proposed is erection of 28 no. dwellings, access, landscaping and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A signed unilateral undertaking (UU) was submitted prior to the hearing. The heads of terms were not agreed with the Council. At the hearing it was decided that the event should be adjourned to enable the parties to jointly prepare a statement of common ground in relation to contributions, to assist my consideration of the appeal. This document was subsequently submitted, along with a revised UU which supersedes the earlier version. The hearing was closed in writing on 27 November 2020.

### Main Issue

3. The main issue is whether the proposal would prejudice the delivery of a comprehensively planned and well-designed development which addresses the requirements of local plan policy as regards the Barnham, Eastergate and Westergate Strategic Site Allocation.

### Reasons

4. The appeal site is located to the south of Barnham Road on the western side of Barnham. It has an area of 1.49 ha and contains a single detached dwelling together with stables, a manège and grazing land. The site is part of a much larger area of land identified under Policies H SP1 and H SP2c of the Arun Local Plan 2011-2031 (ALP) as a Strategic Allocation which will provide at least 2300 dwellings over the plan period, and up to 3000 in total (a further 700 beyond 2031). Development at Barnham, Eastergate and Westergate will form a self-contained settlement with its own village centre and associated infrastructure.

5. The detailed design and infrastructure requirements for the 'BEW' allocation are listed within Policy H SP2c. ALP Policy H SP2 sets out the requirements common to all Strategic Site Allocations; it stipulates that development proposals must be comprehensively planned and should have regard to a masterplan endorsed by the Council for the respective areas which incorporates high quality imaginative design giving a sense of place and a permeable layout.
6. Work is well advanced on preparing a BEW Framework Masterplan, led by consultants on behalf of the majority landowners. The draft masterplan has been the subject of public consultation and it was due to be considered by the Council on 25 November where the officer recommendation was for a Phasing Plan covering the entirety of the BEW allocation to be considered and approved by officers prior to the Framework Masterplan being implemented. This is to ensure housing and infrastructure can be delivered in an appropriate manner.
7. I have not been given sight of the full masterplan, but I am led to believe that it incorporates a 'mini-masterplan' prepared by the appellant for the small part of the BEW site allocation immediately to the south of Barnham Road. This area comprises several contiguous land parcels in different ownerships but includes the appeal site.
8. The application is made in outline with details of access provided for formal consideration. The submission includes an illustrative layout, but this predates the mini-masterplan and discussions between affected landowners. The mini-masterplan has been through various guises, with the latest version taking the form of a fully worked up layout<sup>1</sup> with indicative schemes on neighbouring land parcels to demonstrate how the developments might mesh together. The Council has been involved in the exercise but has not formally approved the layout. This also comes with the warning that it has not been agreed by all parties.
9. The latest layout is the best available evidence on which to base a decision on whether the site is developable on its own, without compromising the Strategic Allocation as a whole. The principle of housing on the site is not in dispute, and there is no suggestion that the site is needed to accommodate any of the significant pieces of infrastructure needed for the allocation. Facilities such as the Community Hub, schools and sports pitches would be located elsewhere, as would the required transport improvements. There is a general consensus over the alignment of the new A29 route through the wider BEW development; this would meet Barnham Road a short distance to the east of the appeal site.
10. The Council has previously raised concerns over the approach towards green infrastructure. However, the mini-masterplan layout has much to commend it in this regard. The development would provide a footpath within a Green Corridor linking Barnham Road with Footpath 321, and this would create the opportunity to retain many of the large and prominent trees along the side and rear site boundaries. The front section of the site would be dedicated to public open space and a policy compliant children's play area, thus maintaining the verdant character of this stretch of Barnham Road. This would ensure compliance with ALP Policy H SP2c insofar as it seeks to prevent the physical coalescence of Eastergate and Barnham by avoiding a continuous urban form along the B2233. The scheme would not prejudice the provision of an ample landscape buffer on the easternmost parcel of land in the mini-masterplan area.

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<sup>1</sup> Plan Ref 6710 SK05 Rev D

11. There is no dispute that the proposed access onto Barnham Road would preserve the protected trees on the site frontage. The site layout is only indicative, but it would provide plenty of opportunity for linkages with neighbouring development parcels, creating a high degree of permeability and the potential for connections onto the realigned A29.
12. Based on the anticipated geology of the site, the Flood Risk Assessment and Drainage Strategy concludes that infiltration drainage should be appropriate as the means of surface water disposal. However, it recommends that percolation tests be undertaken in order to inform the detailed design of the surface water drainage system. This system would need to make the necessary allowance for climate change and address requirements in relation to flood flow routes through the site should an exceedance event occur.
13. The mini-masterplan layout does not show any surface water attenuation features. The appellant contends that drainage can be dealt with via planning condition. However, the results of percolation tests are not yet known and drainage of this site may have implications for adjoining sites and vice versa. The indicative layout shows 30 dwellings instead of the 28 sought. Whilst it may be possible to adjust the layout to show an attenuation pond at the rear of the site, I do not know with any reasonable confidence how the site or its neighbours will be drained. Without a greater degree of certainty on this issue and a revised layout it would be inappropriate to grant outline permission with a condition requiring the reserved matters to accord with the mini-masterplan.
14. ALP Policy H SP2 requires the comprehensive development of Strategic Site Allocations to positively respond to sustainable water management. Policy H SP2c requires proposals for BEW to accord with a comprehensive strategy for surface water management which will be developed in line with the Arun Strategic Surface Water Management Study. ALP Policy W DM2 requires compliance with relevant Surface Water Management Plans. Policy ES1 of the Barnham and Eastergate Neighbourhood Plan (2014) (BENP) states that development will not be supported without clear evidence provided of there being no flood risk (either to the development site or to other land) arising from the carrying out and use of the development. The latter policy pre-dates the ALP, but is nevertheless consistent with its provisions, and those of the National Planning Policy Framework (the Framework).
15. The Council accepts that the mini-masterplan achieves the policy objective for comprehensive development. However, comprehensive planning involves more than simply adhering to a masterplan; the Planning Practice Guidance<sup>2</sup> makes clear that a range of other plans and technical reports may also be needed to provide supporting evidence and set out related proposals. The National Design Guide<sup>3</sup> explains that good design involves careful attention not only to buildings, but also other important components of places such as drainage infrastructure. A high quality scheme, particularly one within a Strategic Site Allocation, should place drainage at the heart of the design process. It should not be an afterthought or left to condition without substantive evidence. Whilst layout is a reserved matter, it needs to be demonstrated at the outline stage that an acceptable scheme for 28 dwellings can be achieved together with all necessary infrastructure. This includes surface water drainage.

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<sup>2</sup> Reference ID 26-006-20191001

<sup>3</sup> Paragraph 20

16. For the above reasons, and notwithstanding the positive efforts that have been made to refine the layout, I conclude that the proposal would prejudice the delivery of a comprehensively planned and well-designed development in line with ALP Policies H SP2, H SP2c and W DM2, and BENP Policy ES1. The decision notice cites various other development plan policies but most of these relate to matters which can be addressed at the reserved matters stage. BENP Policy ES3 concerning new development within the Local Gap / Green Infrastructure Corridor is no longer up-to-date and has been superseded by adoption of ALP. The conflict with this policy carries negligible weight.

### **Unilateral undertaking**

17. Delivery of the BEW Strategic Allocation will involve provision of a significant amount of supporting infrastructure. The broad headings for this are set out within ALP Policies H SP2 and H SP2c. Discussions regarding the scale of contributions and methodology for apportioning these were ongoing with landowners at the time of the hearing but further progress has been made subsequently. The Strategic Housing Allocations are not CIL liable and therefore the necessary infrastructure must be secured using planning obligations.
18. It is common ground that the appeal scheme would constitute 0.65% of the total dwelling yield for BEW. This is a reasonable starting point for establishing costs. The submitted UU aims to secure financial contributions towards various types of infrastructure but also non-infrastructure items such as bus services. There are some uncertainties involved, for example where precise costs are not yet known, but there is provision within the UU for these to be calculated at the reserved matters stage. The parties are keen to stress that the figures are not conclusive in perpetuity and may change throughout the delivery of the BEW development. Nonetheless, based on the detailed justification and methodology provided, and applying the same balanced and proportionate approach the Council has adopted, I am satisfied that the contributions are necessary, directly related to the development and fairly related in scale and kind.
19. However, I have some concerns regarding the drafting of the UU. The deed includes covenants by Arun District Council and West Sussex County Council requiring them to take certain actions, but these parties are not signatories to the deed. Covenants requiring the Councils to ring fence the contributions for specified purposes and return unspent monies are unenforceable. The appellant accepts this criticism but argues that the only party who would be potentially prejudiced would be the developer. Whilst I have no reason to think that local authorities would behave anything other than responsibly, they would not be bound by the relevant covenants and for this reason the UU does not properly secure the contributions for their intended purposes. It is important that the legal obligations regarding collection and expenditure of the contributions are robust and indisputable, given the complexities involved in delivering BEW and the extended timeline along which contributions will be sought from different sites.
20. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the parties. Nonetheless, as it stands, and for the reason given in the previous paragraph, I am not satisfied that the UU would make secure provision for the infrastructure to meet the additional needs arising from the development and wider BEW allocation.

## **Planning Balance and Conclusion**

21. The Council does not dispute that it is unable to identify a 5 year supply of deliverable housing sites in line with paragraph 73 of the Framework. A committee report from December 2019 cites a supply figure of 3.7 years. I have seen no evidence to indicate the situation has improved. The failure to demonstrate the requisite land supply triggers paragraph 11(d) of the Framework. This stipulates that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits where assessed against the Framework taken as a whole.
22. The proposal would contribute to remedying the housing land supply shortfall. However, any outline permission granted pursuant to this appeal would need to be followed by a reserved matters application and a period for discharging conditions. There is no compelling evidence to persuade me that this process would be any more expeditious than submitting a full planning application that is supported by the relevant plans and technical reports. This tempers the weight I can attach to the benefits of delivering affordable and market homes.
23. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. The Framework makes clear that the planning system should be genuinely plan-led. Notwithstanding the preparation of a mini-masterplan, the proposal would conflict with ALP Policies H SP2, H SP2c and W DM2, and BENP Policy ES1 insofar as these require development proposals to be comprehensively planned in respect of all relevant matters including surface water drainage. Masterplans are recognised within national policy and guidance as an important tool for achieving well-designed places. The above policies are consistent with the Framework and in light of this I have attached the development plan conflict significant weight.
24. Applying the policies of the Framework as a whole, the adverse impacts arising from the failure to achieve high quality design by incorporating surface water drainage into the mini-masterplan would significantly and demonstrably outweigh any benefits of delivering new homes more quickly than might otherwise have been the case had the appellant waited for the masterplan exercise to conclude. Such benefits are not likely to be significant in any event and consequently I find that the proposal would not benefit from the presumption in favour of sustainable development.
25. Accordingly, I conclude that the proposal would conflict with the development plan taken as a whole. There are no material considerations that would justify a decision otherwise than in accordance with the development plan. For the reasons set out above and having regard to all other matters raised, including the various appeal decisions presented in evidence, I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Paul White BA (Hons) Dip MRTPI      Director of Planning, Smith Simmons Partners

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

Michael Eastham BA (Hons),      Principal Planning Officer  
MTPI, MRTPI

James Cross BSc (Hons) MSc      Strategic Development Sites Project Manager  
Lcgi TP. MTPI

### **INTERESTED PARTIES:**

Chris Allington      Chairman of Barnham & Eastergate Parish Council

## **Documents submitted during the hearing**

1. Extract from the proposals map for the Arun Local Plan 2011-2031 showing the boundaries of the BEW Strategic Site Allocation

## **Documents submitted during the adjournment**

2. Planning Obligations Statement of Common Ground dated 9 October 2020
3. Signed Unilateral Undertaking dated 12 October 2020
4. Letter from Lichfields dated 16 October 2020
  - a. Response from Arun District Council dated 22 October 2020
  - b. Response from Appellant dated 28 October 2020
5. Response from Parish Council dated 29 October 2020 (no further comments)
6. Email from Arun District Council of 16 November 2020 including appeal decision Ref APP/C3810/W/20/3248659
  - a. Response from Appellant dated 17 November 2020