
Appeal Decision

Hearing held on 13 April 2022 and 13 July 2022

Site visit made on 13 April 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Appeal Ref: APP/C3810/W/21/3278130

Land west of Tye Lane, Walberton, West Sussex, BN18 0LU

- 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 David Wilson Homes against the decision of Arun District Council.
 - The application Ref WA/68/20/OUT, dated 29 September 2020, was refused by notice dated 12 January 2021.
 - The development proposed is described as 'Outline planning application with all matters reserved, other than means of access, for the construction of up to 155 dwellings (30% affordable homes) and amendment to boundary of garden land to serve adjoining property.'
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of up to 155 dwellings (30% affordable homes) and amendment to boundary of garden land to serve adjoining property at Land west of Tye Lane, Walberton, West Sussex BN18 0LU in accordance with the terms of the application, Ref WA/68/20/OUT, dated 29 September 2020, and subject to the conditions in the attached schedule.

Preliminary Matters

2. The planning application was submitted in outline with all matters of detail reserved for future consideration save for two access points into the site¹. 'Access', in so far as it relates to circulation routes within the site, is a matter reserved for future consideration. I have assessed the proposal on this basis and treated the drawings in all other respects as being an illustration of how the proposal could ultimately be configured.
3. A revised Site Layout Masterplan (Drg No: 210824/SL/MP 51) was submitted with the appeal and this provides a more detailed illustrative site layout. This is not annotated as being illustrative, but it was confirmed at the hearing that this is how I should treat it. It is also referred to in the appellant's submissions as being illustrative. I have therefore proceeded on that basis. I have accepted this drawing as it simply shows another possible site layout rather than changing any aspect of the proposal.

¹ The main access from Tye Lane site entrance and a further pedestrian/cycle/emergency access from Field Close. The provision of a pedestrian/cycle access onto Tye Lane opposite the Linden Homes site would be addressed at the reserved matters stage as part of the 'layout'.

4. The hearing was adjourned on the 13 April 2022 to enable the appellant, Council, Local Highway Authority and National Highways an opportunity to seek to agree a Statement of Common Ground relating to highway matters. This approach was exceptionally followed in this instance as there were circumstances that indicated it would be expedient and fair to do so. In particular, it was agreed by the parties present at the hearing on the 13 April 2022 that the impacts on the Fontwell roundabouts could be mitigated subject to further discussions over the detail².
5. A revised version of the National Planning Policy Framework (the 'Framework') has been published since the Council issued its decision. All parties had an opportunity to address this in their submissions. As a result, no party would be prejudiced by me having regard to the new version of the Framework.

Background

6. The Walberton Neighbourhood Plan Review (NP) was made in July 2021 and therefore determining the appeal scheme could not prejudice the outcome of the examination of this document. As a result, there is no risk of prematurity and therefore the Council understandably withdrew its second reason for refusal before the hearing opened.
7. The appellant provided a further drainage statement with the appeal. Subsequent to this, the Council's Drainage Engineers removed their objection subject to planning conditions. These planning conditions are set out in the agreed Statement of Common Ground (SOCG). The Council therefore withdrew its fifth reason for refusal before the hearing opened. After reviewing the substantive evidence before me³, I am satisfied this matter can be addressed through suitably worded planning conditions and therefore a conflict with Policy W DM3 of the Arun Local Plan (LP) and Policy VE7 of the NP would not occur.
8. At the hearing the Council reaffirmed that the prior extraction of minerals within the site is not viable for the reasons summarised in Paragraph 7.6 of the SOCG. The Council subsequently agreed that the Addendum Minerals Resource Assessment submitted by the appellant addressed Policy M9b(iii) of the West Sussex Joint Minerals Local Plan (JMLP). Following a further discussion at the hearing, the Council revised its stance and agreed with the appellant that the provision of housing, in the context of the current housing land supply position, represented an overriding need that outweighed the safeguarding of the minerals in the appeal site, especially given the impracticalities of extraction and their poor quality. As a result, the Council withdrew its sixth reason for refusal. Given the evidence before me, it was correct to do so as there would be no conflict with Policy M9 of the JMLP.
9. The Council has confirmed, through the SOCG that the agricultural land within the appeal site is Grade 3a. Although Grade 3a land falls to be considered as the best and most versatile, it is at the lower end of this range. There is also much better agricultural land elsewhere in the district such as the coastal plain. In this context and given the acute housing land supply position in the district, the Council and appellant agree that the need for housing outweighs the need to protect the agricultural land at the appeal site. This is subject to the

² The appellant had also sought to liaise with National Highways on several occasions before the hearing opened but had not received a response.

³ Principally the drainage strategy in the Flood Risk Assessment, informed by groundwater monitoring, and the technical comments provided by consultees

imposition of a condition securing a Soil Resource Strategy and Sustainability Options Appraisal. On this basis, the Council correctly withdrew its seventh reason for refusal before the hearing opened. Accordingly, there would be no conflict with Policy SO DM1 of the LP or Paragraph 174(b) of the National Planning Policy Framework (the 'Framework').

10. The appeal was submitted with further biodiversity evidence, including an update following a further site visit undertaken by the appellant's ecologist. This confirmed that the baseline position had not changed since the earlier Preliminary Ecological Appraisal and Phase 1 Habitat Survey and that further badger and Great Crested Newt surveys would be unnecessary. After reviewing this information, the Council withdrew its eighth reason for refusal subject to the imposition of the conditions in the SOCG relating to biodiversity enhancements. Again, this was a prudent cause of action given the evidence submitted. I therefore share the view of the Council and appellant that a conflict with Policy ENV DM5 of the LP would not occur.

Main Issues

11. Given the foregoing, the main issues in this appeal are:

- Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy in the development plan;
- The effect of the proposed development on the landscape and the character and appearance of the area;
- Whether a development of the size proposed could be designed to be of a suitable quality;
- Whether the proposal would preserve or enhance the character or appearance of the Walberton Conservation Area and the Walberton Green Conservation Area;
- The effect of the proposed development on the setting of the Walberton Conservation Area and the Walberton Green Conservation Area; and
- The effect of the proposed development on the road network and highway safety;

Reasons

The suitability of the location with reference to the spatial strategy

12. The NP sets out several key aims, including prioritising the use of brownfield sites for housing and avoiding large development sites in the countryside. These aims flow from the vision and objectives of the plan, which include preserving the distinctive rural character of Walberton. To this end, Policy HP1 of the NP states that proposals for development within the Built-Up Area Boundary (BUAB) of Walberton will be supported, and proposals outside the BUAB will be supported where they accord with the countryside policies of the Arun Local Plan. This approach echoes that in Policy SD SP2 of the LP.
13. Policy C SP1 of the LP is concerned with development outside BUABs and states that land defined as countryside, such as the appeal site, will be recognised for its intrinsic character and beauty. The policy goes on to explain that certain types of development in the countryside identified in a closed list will be

permitted, such as where it is for agriculture or informal recreation or in accordance with other policies in the LP. The corollary of this is that types of development not listed would be contrary to Policy C SP1.

14. Being a proposal for up to 155 homes in the countryside, the appeal scheme would not be within a BUAB and would not fall under any of the types of development listed in Policy C SP1. It would therefore be at odds with both Policy SD SP2 and C SP1. As a result of not be in accordance with the countryside policies of the LP, the proposal would be contrary to Policy HP1 of the NP. Accordingly, the appeal site is not a suitable location for the appeal scheme when applying the spatial strategy in the development plan. Instead, it would harmfully undermine the objectives of the strategy and the relative certainty that should flow from a planning system that is genuinely plan led.

The effect on the landscape and character and appearance of the area

15. The appeal site encompasses a large field currently in arable cultivation, several paddocks intensively grazed by horses and stables of limited architectural quality. Parts of the site include mature hedgerows and trees. Such features are apparently referred to within the Arun Landscape Study 2006 as being of high landscape value. Furthermore, a view towards mature trees along North Pound is identified as an important vista in the NP.
16. The southern boundary of the appeal site abruptly adjoins stark residential development resulting in a hard suburban edge. This is also the case along most of the site's western boundary, although the north-western boundary of the site adjoins the long verdant rear gardens of the properties in Copse Lane. To the east is the large Linden Homes development and a golf course. The former is prominent in views from Tye Lane and dilutes the rural character of this thoroughfare. Thus, the appeal site has development on three side. Moreover, to the north there are several commercial units at Hooe Farm and beyond this the A27. The appeal site is therefore broadly surrounded by development.
17. Therefore, when combining the rural character of the appeal site with the suburban built-up appearance of its immediate surroundings, the area exhibits a semi-rural settlement fringe character. As a result, I share the view of the appellant that the appeal site is not part of a 'valued' landscape for the purposes of Paragraph 174(a) of the Framework. Nevertheless, there are landscape features of value including the hedges and trees. Moreover, the largely undeveloped greenfield nature of the appeal site reinforces the distinctive rural character of Walberton as identified in the NP.
18. Constructing up to 155 homes on the appeal site would be inherently urbanising, resulting in a substantial adverse impact on its landscape character. The West Sussex Landscape Character Assessment (LCA)⁴ identifies suburban expansion such as that proposed as a landscape and visual sensitivity. The breaching of established hedgerows would also erode landscape features of identified value as would the urbanising of Tye Lane⁵. These effects would be appreciable from nearby properties, The Street and Tye Lane. The latter would also be urbanised by the presence of an engineered highway access and a

⁴ Regional Landscape Character: Landscape character assessment of West Sussex 2003 – SC8: Ashlings, Halnaker and Fontwell Upper Coastal Plain

⁵ See the West Sussex LCA which refers to winding hedged lanes and the Arun LCA which refers to arable fields, mature trees and hedges as key characteristics of the Avisford Park LCA

pavement running along its western edge. The proposal would therefore harm the landscape character of the area.

19. However, given the presence of surrounding development the impact would be contained to a localised visual envelope as demonstrated in the Landscape and Visual Impact Assessment submitted by the appellant, the findings of which are unchallenged by the Council. This would be the case even when allowing for the slope of the site. That said, the impact would be substantial from some of these localised views, especially neighbouring properties, although the effect on public views would generally be of moderate magnitude or less. Moreover, when viewed from within the localised envelope, the development would be experienced in a semi-rural settlement fringe landscape with some notable suburban features such as the stark southern boundary. This would all serve to notably moderate the adverse impact on the landscape.
20. Furthermore, the illustrative masterplan demonstrates that the housing could be set into the site away from the boundaries and behind generous landscaped buffers. In addition, the Design and Access Statement indicates, correctly in my view, that housing should not exceed two storeys in height, and should be single storey along the southern boundary to lessen the visual impact of the scheme. This would reduce the prominence of the proposal from Tye Lane and soften its impact from nearby properties. With the above mitigation secured through the reserved matters, and there is no reason to suggest it would not, the perceived urbanising impact on visual amenity would be further reduced.
21. The appeal scheme would be visible from The Street via North Pound. At this point there is a small community garden with a bench that provides a static view towards the appeal site and a group of mature trees. This view allows the distinctive rural character and setting of Walberton to be appreciated through a connection with open countryside. As a result, the vista is identified as a 'distinctive view' in the NP. The appeal scheme would urbanise this view and in doing so harmfully dilute the ability to experience the presence of countryside from The Street. This would undermine the purpose of identifying this vista as a 'distinctive view' in the NP. That said, the illustrative masterplan demonstrates that open space could be sited to soften the foreground of the view. Importantly, a vista could be retained up toward the focal trees by creating an informal avenue generously planted with trees. This, taken with the use of single storey properties, would ensure the distinctive view is factored into the proposal. However, the scheme would not properly respect the view when having regard to the purpose behind its identification in the NP.
22. In conclusion, the proposal would have a substantial impact on the landscape character of the site. However, the impact on both the character and visual amenity of the surrounding area would be much more limited if a sensitive design along the lines set out in the illustrative masterplan was pursued. Notable aspects of this being the low building heights, the generous buffers between housing and the site boundaries, the generally high levels of planting and careful treatment of the distinctive view. Overall, the proposal would have a moderate adverse impact on the landscape and the character and appearance of the area.
23. As a result, the appeals scheme would be at odds with Policy HP13 of the NP, which seeks to secure development that contributes towards local character, and Policy LAN DM1 of the LP, which seeks to secure development that

respects the particular characteristics and natural features of the relevant landscape character areas. The proposal would also be at odds with Policy V13 of the NP, which seeks to ensure distinctive views are respected.

Whether the proposal could be designed to be of a suitable quality

24. The Council confirmed at the hearing that in its view the appeal site could not accommodate up to 155 homes in a way that would achieve a suitable design quality. Three concerns led to this view being reached. These being, that an emergency vehicle access could not be achieved, that the proposal would lack permeability, including a cycle and footway from North Pound, and there would be insufficient space for green infrastructure to the northern and western boundaries of the site.
25. It is not entirely clear why the Council is seeking an emergency access as this was not requested by the emergency services or the Local Highway Authority. That said, the revised illustrative masterplan shows that an emergency link could be provided from the centre of the site to Field Close. The detail relating to this can be explored further at the reserved matters stage when internal circulation routes and layout are considered. I have seen nothing of substance to demonstrate that an emergency link from Field Close would be unsafe or desirable. As a result, this matter has been resolved.
26. The original concept masterplan showed blocks of development tight to the northern and western boundaries. The revised masterplan submitted with the appeal demonstrates that the northern blocks need not directly adjoin the northern boundary. This would provide space to reinforce the northern boundary with additional green infrastructure and provide circulation routes. In any event, the proposal would have a density of around 20 dwellings per hectare (dph), which is not high and similar to that in the village (18.8dph), as calculated by the Parish Council. If required, there would be scope to provide more compact forms of development, such as more terraces, if space needed to be found for more landscaping or circulation routes. Accordingly, there is scope to provide adequate levels of green infrastructure and permeability.
27. The development parcel shown in the north-western corner of the appeal site may not have a buffer with the rear gardens of the properties in Copse Lane, but in this instance, there would be no need to. This is because the rear gardens to the west are very large and separated from the appeal site by a mature hedge. If designed sensitively, then dwellings in this area of the site would not inherently harm the living conditions of the occupants of the neighbouring properties in Copse Lane.
28. The scheme would benefit from an access off North Pound as this would improve permeability. Especially as such a route could provide a desire line to The Street for those properties nearest to it. It would similarly provide access into the site from existing properties in and around North Pound. However, the appeal scheme would have western links via Field Close and easterly links via Tye Lane. The latter would include a new pavement. As a result, the absence of a link from North Pound would only add a couple of minutes to the journey times of some of the residents of the scheme. This would not result in an unacceptable layout.
29. The illustrative layout could be improved with housing better framing the roads in coherent building lines, especially the main route through the development,

but this can be addressed at the reserved matters stage, as can the provision of street trees.

30. In conclusion, the masterplan demonstrates several positive design concepts that, if followed through to the reserved matters, would provide the grounding for a scheme of suitable design quality. These include the ability to provide clear and legible perimeter block structure with active edges, permeability through and into the site, generous buffers where required around most of the site and high levels of landscaping and open space provision. Thus, there is nothing of substance to suggest the proposal would be of inherently unsuitable quality with the maximum number of homes proposed. Accordingly, there need not be a conflict with Policies D DM1 or T DM1 of the LP or Policies GA2, HP11 or HP13 of the NP, supported by the Arun District Design Guide, which together seek to secure high quality design.

Whether the proposal would preserve or enhance the conservation areas

31. The Council and appellant agreed at the hearing that the Walberton Conservation Area (WCA) has a rich mix of attractive period buildings and a distinctive and almost intimate linear structure and pattern to its layout focussed on The Street. It therefore has historic and aesthetic value as a repository of period building styles, bygone lifestyles, local character and a traditional village form.
32. Similar conclusions can be reached for the Walberton Green Conservation Area (WGCA) in respect of its historic buildings. However, it is arranged around a crossroads and historic green and therefore provides evidence of a different village form with a more overt and spacious rural character. The rural setting and character of the CAs, which are still possible to experience despite the modern development and traffic, also provides some significance as the historic villages were, and to an extent are, intrinsically linked to the rural landscape.
33. The proposal would have a residual direct effect on the WCA due to the construction of a pavement along the short section of Tye Lane that is in the CA. There would also be additional traffic movements in both the WCA and the WGCA. The Council is not concerned by the former as the alteration would be viewed in the context of existing pavements and I share this view.
34. The Transport Assessment (TA) demonstrates that there would be around 766 vehicle movements from the proposed development across a daily 12-hour period. I do not have substantive evidence before me to suggest different figures should be used, especially as the Council has reviewed them with the Local Highway Authority and are content. The TA confirms that around 84 movements would take place in the AM peak and 89 in the PM peak. This would result in an average of about 1.5 vehicle movements a minute. I share the view of the appellant that this would be a modest but steady stream. However, it must be borne in mind that as things stand it is highly improbable that all these trips would pass through the CAs⁶.
35. The increase in traffic would be onto already established routes that are not especially quiet or tranquil due to the existing steady stream of traffic through the CAs. As a result, it would be difficult to perceive the increase arising from the appeal scheme relative to existing traffic movements. As a result, the

⁶ Around 32% of development traffic is anticipated to travel south along Tye Lane into the CAs with the remainder heading north to the A27.

noise and activity of vehicles would result in only some very limited cumulative harm to the rural character of the CAs and the ability to experience them with a semblance of how they once were before modern development occurred.

36. This effect would be more pronounced if Tye Lane was ultimately closed because of the A27 bypass. In effect, all traffic would pass through the CAs. However, the bypass is not currently a committed scheme and therefore cannot be reasonably expected at this stage. This is because it would be subject to a separate consent regime, which would need to consider the impact on heritage assets amongst other matters⁷.
37. In conclusion, the character and significance of either CA as a whole would not be preserved due to the very limited harm that would be caused by the increase in traffic. The proposal would therefore be at odds with the expectations of the Act⁸ and Policies HER DM3 of the LP and VE4 of the NP. These policies seek to secure development that preserves the character or appearance of conservation areas.

The effect of the proposed development on the setting of the WCA and WGCA

38. Historic maps demonstrate that the two CAs were once separate and distinct settlements. In the 20th Century rapid infilling has occurred, and the two settlements now read as one. This has cumulatively eroded the ability to understand, appreciate and experience the historic form and structure of the old settlements, which is a component of their value and significance.
39. The appeal site is insulated from the CAs by modern development to the extent that no meaningful intervisibility would be possible between the appeal scheme and the CAs, albeit subject to the final design and scale (height and massing) of what is proposed. Nevertheless, the appeal scheme would result in a comparatively large body of houses being constructed on otherwise open land between the CAs and on the approach to them. This would erode the rural setting of the CAs and further dilute the ability to appreciate their historic structure and form. The proposal would also result in development in depth away from The Street, thereby eroding the linear form of the WCA.
40. However, the new housing would be separated from the CAs by open space in a way that would provide some 'breathing space' and articulation as a new phase in the history of the settlement. There would also be scope, as the Council suggests, to design the houses in a way that is sympathetic to the historic architecture evident in the CAs. For example, the houses could use local materials, exhibit traditional fenestration design, and include period details such as chimneys and balanced elevations.
41. Moreover, it is likely that some of the new homes would overlook the public open space thereby echoing the interface of housing and green space found in the layout of the WGCA. The approach to the WCA would also be softened by retaining and supplementing the planting along Tye Lane and setting the houses back behind a buffer. That said, the houses would still be visible, at least in the short term before any new tree planting matures, and the access from Tye Lane would be very noticeable.

⁷ Such as the quality of life in the village and noise impacts on future occupants of the appeal scheme

⁸ See Section 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990

42. Some of the potential design elements identified above could soften some of the impacts of the proposal, but they would not eliminate the fundamental drawback that a large body of homes between the two CAs would erode the rural setting of both. Accordingly, the proposal overall would result in some moderate harm to the setting of the CAs. This would be at odds with Policies HER DM3 of the LP and VE4 of the NP.

The effect of the proposed development on the road network

43. Prior to the Council issuing its decision the appellant had submitted a Highways Response Note dated December 2020. The purpose of this note was to address the comments raised by the Local Highway Authority (LHA) and National Highways (NH). Principally, that the TA needed updating and further modelling was required to understand the impacts of closing the Tye Lane/A27 junction (if the A27 bypass Option 5BV1 came to fruition) and from the scheme's traffic on the Fontwell roundabouts. The first issue was a matter for the Local Highway Authority as it related to local roads, whereas the latter were led by NH given the potential effect on the strategic road network.
44. The Council did not consult the LHA and NH on the Response Note prior to issuing its decision. The Response Note was subsequently submitted with the appeal. The LHA reviewed it and confirmed in writing⁹ and verbally at the hearing that its comments and concerns regarding the need to update the TA had been addressed. The provision of a footpath link along Tye Lane and works to the Tye Lane/The Street junction were particularly important in this regard as it would improve pedestrian access into the village. Such works would be secured through the imposition of planning conditions and through a planning obligation. Substantive evidence is not before me to justify departing from the findings in the TA and Response Note, now confirmed by the LHA, that the site access would be safe and that other local junctions would operate within capacity once the appeal scheme was completed. This was a conclusion reached even when considering the proposal's impacts cumulatively with other approved developments.
45. That said, Policy GA5 of the Neighbourhood Plan (NP) states that proposals which significantly increase the level of traffic within Walberton will be resisted particularly in the case of HGV movements. As already mentioned, the proposal would generate 766 vehicle movements in a 12-hour period. This is a significant increase in traffic volumes and therefore a conflict with the policy would occur. However, the TA demonstrates that the road network would be able to accommodate what would be an increase on average, in the very worst-case scenario¹⁰, of just over one vehicle a minute. I have already concluded that this would only have a very limited adverse impact on the ambience and character in the CAs and the village of Walberton. As a result, the conflict with Policy GA5 carries limited weight.
46. Several interested parties have raised concerns that the preferred route of the possible A27 realignment would result in the closure of the A27/Tye Lane junction. If this were to occur then all traffic related to the proposal would pass through Walberton/Walberton Green and the surrounding roads, including West Walberton Lane. This scenario was sensitivity tested in the Response Note. This assessment concluded that that there would be no capacity issues even if

⁹ See Appendix A of the Highways Proof of Evidence

¹⁰ All traffic heading south along Tye Lane

all development traffic were routed through the Tye Lane/The Street junction and the corresponding local roads. Again, the LHA are content with the analysis and findings. I have no substantive evidence before me to justify departing from the LHA's expert and independent view as underpinned by technical evidence supplied by the appellant.

47. After the adjournment of the hearing on the 13 April 2022 the appellant, Council and NH have agreed¹¹ that the appeal scheme would have a significant¹² cumulative impact on capacity at the Fontwell roundabouts. In accordance with Paragraph 110d) of the Framework, the application should ensure the impact can be cost effectively mitigated. To this end the appellant has proposed two forms of mitigation¹³ that would involve signalised improvements schemes within the highway at the Fontwell East roundabout. These have been costed at £355,000 to include a 30% contingency. It is prudent to include a sizeable contingency given the unknown risks that are inherent in such projects. NH and the Council confirmed at the hearing that the package of mitigation would be effective and therefore a severe impact would not occur. I have no reason to disagree.
48. The appellant's preference is to provide a financial contribution of £355,000 through a planning obligation. However, I understand NH's understandable reticence to this approach because it has not verified the appellant's costings and a 40-50% contingency has been required on other projects. Moreover, NH may simply not have the capacity to deliver the mitigation in the appropriate timescale. NH have therefore suggested that the mitigation is secured through a negatively worded condition that prevents occupation beyond 104 homes until the mitigation works are completed.
49. The use of a negatively worded condition in this way would be appropriate because there is nothing before me to suggest there is no prospect that the highway works could be undertaken by the developer¹⁴. However, this approach would limit the developer's flexibility. It may be that at the point the highway works are required, NH would be in a better position to undertake them. If that is the case then it would make sense for the developer to pay the contribution, assuming NH are content it would be sufficient. Moreover, the payment of a financial contribution should be secured through a planning obligation in this instance as there are not exceptional reasons to do so through a planning condition¹⁵.
50. Accordingly, the submitted planning obligation makes provision for the developer to serve notice, prior to implementation of the development, to ascertain from the Council/NH whether the highway works should be delivered by the developer pursuant to a s278 Agreement or by NH following the payment of a financial contribution. This approach would protect NH's position if the costings were too low or delivery not possible within the necessary timescale. But it would also permit some flexibility. The latter is advantageous in this instance as it reduces the risk that development would stall once it has begun, with the corresponding impacts that could have on delivery at a point in time when the housing land supply position is challenging.

¹¹ The appellant has pragmatically adopted the view of NH

¹² 'Significant' in this instance is to be considered as a noteworthy or noticeable impact

¹³ See Appendix B of the A27 Fontwell Interchange Traffic Modelling Position Statement, by Pell Frischmann

¹⁴ See Planning Practice Guide Paragraph 009 Reference ID: 21a-009-20140306

¹⁵ See Planning Practice Guide Paragraph 010 Reference ID: 21a-010-20190723

51. In conclusion, the appeal scheme would not have a harmful or severe impact on highway safety and the road network either individually or cumulatively. As a result, there would be no conflict with Policy T SP1 of the LP. There would, however, be a limited conflict with Policy GA5 of the NP.

Other Considerations

The other concerns of interested parties

52. Substantive evidence is not before me to demonstrate that existing infrastructure would be unable to cope with the number of households proposed, even when considered cumulatively with other strategic sites. A contribution pursuant to the Community Infrastructure Levy could be used to mitigate some impacts where required, such as additional pressure on healthcare facilities and education.
53. The level of car parking would be determined at the reserved matters stage and there is nothing of substance before me to suggest relevant parking standards could not be adhered to. Similarly, the impact on living conditions would be addressed at the reserved matters stage. The proposal would not have an inherently harmful impact in this respect and, although visible from nearby properties, it need not dominate the outlook from them given the space available.
54. I understand that the Council refused an access onto Tye Lane under application WA/95/18/RES, but I have considered the proposal on the evidence before me and found that the access proposed would be acceptable.

The setting of listed buildings

55. Although not a reason for refusal, the committee report identified harm to the setting of four listed buildings¹⁶. During the hearing the Council explained that this was an error and arose from an erroneous interpretation of the comments of the Council's Conservation Officer. After visiting the site and reviewing the evidence before me, including the appellant's Heritage Statement, I am satisfied that the proposal would preserve the setting of these listed buildings. This is mainly due to them being away from the appeal site and already experienced in the context of built-up street scenes.

Heritage Balance

56. The limited harm that would occur to the CAs from increased traffic and the moderate harm to their settings would not be severe and would therefore be 'less than substantial' within the meaning of the National Planning Policy Framework (the 'Framework'). Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal. In so doing, the Framework explains that great weight¹⁷ should be given to an asset's conservation. This does not amount to a direction to refuse proposals that harm CA's or their setting, but it provides a strong weighting in favour of preservation (doing no harm).
57. The appeal scheme would deliver up to 155 homes in a location where future residents could access basic everyday services without resorting to private

¹⁶ The Village Pound, Friars Oak and Friars Oak Cottage, Pear Tree Cottage and 15-20 The Street, which are Grade II listed buildings.

¹⁷ Which is tantamount to considerable importance and weight

motorised transport. The travel plan would assist in this. In so doing, the proposal would provide a mix of homes that would benefit housing choice in a scheme with the foundations to be well-designed. There would also be a moderate benefit to the construction industry and the subsequent occupation could provide a boost to the provision and retention of local services and facilities. The new residents could also provide vitality to the community by getting involve in local clubs.

58. However, save for an apparently curtailed bus service, there is little substantive evidence before me to indicate that the services, facilities or clubs in the village are suffering for lack of patronage, and a large number of homes have already been approved in and around Walberton. As a result, my start point is that the delivery of housing would be of only moderate benefit.
59. Nevertheless, it is common ground that the Council are currently unable to demonstrate a five-year housing land supply and the shortfall is acute at around 2.4 years. The delivery of 155 homes would notably boost housing land supply in the district. In this context the delivery of housing would be elevated to a very significant public benefit. In addition, 30% of the proposed dwellings would be affordable housing. There are around 1252 households on the housing register and therefore the delivery of around 47 new affordable homes would be a significant benefit.
60. The appeal scheme is required to provide around 1.27 hectares (ha) of public open space. It would instead, provide around 2.1ha. Given its likely location within the scheme and proximity to existing residents, the open space would benefit more than just the future occupants of the appeal scheme. This would be a moderate public benefit. There would also be a significant uplift in biodiversity, although this has not been quantified. There is also an opportunity to address surface water runoff from the site, which has been a problem in the past. These matters add further moderate weight in favour of the proposal. Cumulatively, the appeal scheme would deliver benefits of a high order.
61. When weighing these matters, the benefits of the proposal would be of a high order and would be sufficient to outweigh the very limited to moderate harm identified to the CAs and their settings. This would be the case even though I have given great weight to their conservation. Accordingly, there would be no conflict with Paragraph 200 of the Framework as harm to designated heritage assets would have clear and convincing justification.

Paragraph 11 of the Framework

62. The Council are currently unable to demonstrate a five-year housing land supply and, as previously mentioned, the shortfall is serious. In such circumstances Paragraph 11 of the National Planning Policy Framework (the 'Framework') states that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.
63. As an adverse impact, the proposal would be at odds with the spatial strategy for housing set out in the NP and LP. However, a rigorous application of this strategy would undermine attempts to remedy the housing deficit. Moreover, it is unclear how the Council intends to address the housing land supply shortfall as the Non-Strategic Sites Allocation Plan has not progressed. As a result, the

conflict with the spatial strategy carries only limited weight in this instance when based on the evidence before me.

64. In coming to this view, I note that the NP has only been recently made. I am therefore acutely aware of the understandable local frustration allowing the proposal would naturally provoke, especially as developing the appeal site was considered and discounted during the formation of the NP. In this context, Paragraph 14 of the Framework states that the adverse impacts of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh the benefits of a housing development. However, this is only the case if all four of the listed criteria apply. As the housing supply in the district is below 3 years, Paragraph 14 of the Framework is not engaged. Moreover, discussions at the hearing casted some doubt on whether the housing target in the NP was based on a properly formulated identified housing requirement. The proposal is therefore to be determined in accordance with Paragraph 11 of the Framework despite the NP being recently made.
65. Added to the limited harm from a conflict with the spatial strategy is the limited conflict with Policy GA5 of the NP, moderate harm to the landscape and the very limited to moderate harm to the CAs and their setting. The heritage impact is a matter of great weight. The proposal is therefore at odds with the development plan as a whole and several policies in the Framework¹⁸. Although not resulting in a policy conflict, the loss of agricultural land would also be an adverse impact of the proposal.
66. Nevertheless, for the reasons I have already gone into, the appeal scheme would have benefits of a high order delivering positively against several policies in the Framework¹⁹. Most notably the aim to significantly boost the supply of housing, including delivery of affordable housing, and locating housing to maintain or enhance the vitality of rural communities. Thus, the cumulative adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This indicates that on this occasion, the decision should be taken otherwise than in accordance with the development plan.

Planning Obligations and Conditions

67. Although the absence of a planning obligation did not factor as one of the Council's reasons for refusal, it is nevertheless seeking one to secure the provision of affordable housing, open space and highways improvements. A planning obligation was submitted after the hearing.
68. *Affordable Housing* – As already explained, there is an identifiable need to provide affordable housing in the district. To this end Policy AH SP2 of the LP seeks to secure 30% of homes on schemes of 11 homes or more as affordable housing. The planning obligation before me would secure 30% affordable housing, including First Homes. This obligation is necessary to meet the requirements of the development plan, directly related to the proposal and there is no substantive evidence before me to demonstrate it would be unfair in scale and kind. I can therefore take the obligation into account.
69. *Open Space* – Policy OSR DM1 of the LP requires the provision of open space in accordance with Council guidance. This can relate to the quantity or quality of

¹⁸ Including Paragraphs 15, 20, 174(b) and 189

¹⁹ Including Paragraphs 60, 63, 74, 79, 81, 92(a), 98, 105, 130 and 174(d)

provision. The Council's Open Space Supplementary Planning Document (SPD) sets out a requirement for a minimum of 1.27ha of open space on site. The appeal scheme would provide 2.1ha and this would be secured through the submitted planning obligation, as would the maintenance of the POS and the provision of a Local Equipped Area of Play and three Local Areas of Play.

70. This level of provision would exceed the requirement in the SPD, but I have seen no evidence to demonstrate that there is a local surplus in the quantity of open space. Moreover, the provision of 2.1ha of accessible open space is a benefit of the proposal that must be secured to be factored into the planning balance. As a result, the obligation is necessary, directly related to the development and fair and reasonable in scale. I can therefore take the obligation into account.
71. *Highway improvements and travel plan* – I have already explained that it is necessary to secure mitigation at the Fontwell East Roundabout in order to prevent a conflict with Policy T SP1 of the LP and the Framework. Likewise, highway works along Tye Lane and at the Tye Lane/The Street junction are necessary. The mitigation in the form of a financial contribution or works pursuant to a s278 Agreement are directly related to the impact of the development and fair and reasonable in scale. I can therefore take the obligation into account.
72. To promote sustainable transport, it is necessary for a travel plan to be prepared and implemented. As part of this it is necessary for the Developer to pay a monitoring fee to the County Council so the success of the plan can be tracked. This would be secured through the planning obligation, which would be necessary, directly related to the development and fair and reasonable in scale. I can therefore take the obligation into account.
73. Turning to conditions. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council and appellant. I have also made minor changes to the conditions to make them more precise and enforceable, although their aim and meaning has not been altered.
74. In addition to standard commencement conditions, it is necessary to define the reserved matters and require their approval. I have included 'access' as a reserved matter in order to deal with internal circulation routes, which will probably include a cycle/pedestrian route to link with the Linden Homes scheme to the east of the appeal site.
75. A drawings condition relating to the position of the accesses added in the interests of certainty. To protect living conditions, it is necessary to address potential land contamination and secure details of construction management (including hours²⁰) and foul drainage. To reduce flood risk and adhere to Policy VE7 of the NP, it is necessary to secure details of surface water drainage and the maintenance and management of any system. To protect highway safety and promote sustainable transport, it is necessary to secure the provision of the highway access and a footway along Tye Lane prior to occupation.
76. To protect as yet unknown archaeology, it is necessary for a scheme of investigation and recording to be secured. To promote sustainable construction, it is necessary for details of decentralised and renewable or low carbon energy

²⁰ Reference to Traffic Regulations Orders has been removed as this would duplicate other legislation

to be approved and implemented. To protect and enhance biodiversity it is necessary to secure the provision and retention of mitigation and enhancement measures through a management plan. To adequately manage foul drainage, it is necessary to secure drainage details and subsequent maintenance and management.

77. In the interest of providing communication infrastructure, it is necessary to secure a strategy for the provision of high-speed broadband. To adhere to the development plan and support the local economy grow, it is necessary to secure an Employment and Skills Plan. To safeguard the soils in the site, it is necessary for the development to be carried out in accordance with a Soils Resource Strategy and Sustainability Options Appraisal.

Conclusion

78. The appeal scheme would not harm highway safety or result in severe residual impacts on the road network. Nevertheless, the harm in the other respects outlined above would result in a conflict with the development plan taken as a whole. However, in this instance material considerations, namely the Framework, indicate that the appeal should be determined otherwise than in accordance with the development plan. Accordingly, the appeal has succeeded.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Paul Tucker QC
Peter Cleveland
Richard James
Stephen Adams
Mr Evans
Mark Smith

Kings Chambers
Henry Adams
Archaeology South East
Pell Frischmann
Pell Frischmann
Paul Basham Associates

FOR THE LOCAL PLANNING AUTHORITY

Juan Baeza
Kevin Bown
David Bowie
Stephen Gee
Edward Anderson

Arun District Council
National Highways
National Highways
West Sussex County Council
West Sussex County Council

INTERESTED PARTIES

Andrew Vawer

Walberton Parish Council

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

1. Appeal decision APP/C3810/W/21/3273087
2. Arun District Design Guide
3. Drawing of junction improvement to the Tye Lane/A27 junction in respect of the Land East of Tye Lane development
4. Suggested planning condition relating to offsite highway works along Tye Lane
5. Highways Action Plan/Memorandum of Understanding to be followed during the adjournment
6. Addendum to the SOCG containing a list of conditions agreed by the Council and appellant received 20 July 2022
7. Policy M9 of the West Sussex Minerals Local Plan
8. Full list descriptions for The Village Pound, Friars Oak and Friars Oak Cottage, Pear Tree Cottage and 15-20 The Street
9. Signed copy of the Highways Memo of Understanding
10. List of suggested planning conditions
11. Highway technical note dated 27 April by Pell Frischmann
12. Email update from the appellant dated 27/05/22
13. Position statement drafted by Pell Frischmann 01/07/22
14. Email confirming that West Sussex CC has no objections to the proposal subject to conditions and planning obligation dated 07/07/22.
15. National Highways suggesting there is an agreed way forward dated 07/07/22.
16. Final planning obligation received 20 July 2022

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.
- 4) The development shall be carried in accordance with the following approved plans:
 - Drawing Number LP.01 Rev. P3 (Site Location Plan);
 - Drawing Number 041.0071.001 Rev. A. –
 - Drawing Number 041.0071.004 – Visibility Splay and Junction Improvements at The Street/Tye Lane Junction. –
 - Drawing No. 041.0071.006 – Potential Footway Link on Tye Lane
- 5) Prior to the commencement of development, including any works of demolition, a Landscape and Ecological Management Plan (LEMP) shall be submitted to the Local Planning Authority for approval and will be based on the recommendations within the supporting Ecological Mitigation and Enhancement Statement (Rev. 03) dated 18th September 2020 and the Phase 2 Ecology Surveys (Rev. 03) dated 18th September 2020. All approved details shall then be implemented in full and in accordance with the agreed timings and details and thereafter retained.

The LEMP shall include but not be restricted to:

- The creation of a wildflower meadow along the western, southern and eastern boundaries of the site;
- New species rich native hedgerows and trees to be planted along all boundaries of the site;
- Timings for clearance of trees or scrub to avoid impacts on breeding birds;
- Details of compensatory and additional tree planting along the boundaries of the site;
- Details and locations of bird and bat boxes;
- Details and locations of hedgehog boxes/houses;
- Details and locations of the reptile hibernacula within the reptile receptor area
- Should the detailed layout of the site require the removal of further trees which have the potential to support bats, a climbed tree inspection survey will be required.

- 6) Prior to the commencement of development, including any works of demolition, a site walkover survey should be carried out to investigate whether badgers are using the site. The survey should take place no more than 1 month prior to the commencement of works. If an active sett(s) is found, then no development shall commence until Natural England shall have been consulted and a mitigation strategy shall have submitted to and approval in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved mitigation strategy.
- 7) Prior to the commencement of development, including any works of demolition, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall include but not be restricted to:
 - The anticipated number, frequency and types of vehicles used during construction,
 - The method of access and routing of vehicles during construction,
 - Full details of the construction compound,
 - Dust mitigation measures,
 - Noise reduction measures,
 - The parking of vehicles by site operatives and visitors,
 - The loading and unloading of plant, materials and waste,
 - The storage of plant and materials used in construction of the development,
 - The erection and maintenance of security hoarding,
 - The provision of effective wheel washing facilities and other works required to mitigate the impact of construction upon the public highway
 - Details of public engagement both prior to and during construction works
- 8) Prior to the commencement of development, including any works of demolition, details of a proposed foul drainage system shall be submitted to and approved in writing by the Local Planning Authority (including details of its siting, design and subsequent management / maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 9) Prior to the commencement of development, including any works of demolition, full details of the proposed surface water drainage scheme/system shall have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and winter Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. No dwelling

- shall be first occupied until the complete surface water drainage scheme/system serving that property has been completed in accordance with the approved details.
- 10) Prior to the commencement of development, including any works of demolition, details shall have been submitted to and approved in writing by the Local Planning Authority for any proposals: to discharge flows to watercourses; or for the culverting, diversion, infilling or obstruction of any watercourse on or adjacent to the site. Any discharge to a watercourse must be at a rate no greater than the pre development run-off values. No construction is permitted, which will restrict current and future landowners from undertaking their riparian maintenance responsibilities in respect to any watercourse or culvert on or adjacent to the site.
 - 11) Prior to the commencement of development, including any works of demolition, full details of the maintenance and management of the surface water drainage system, set out in a site-specific maintenance manual, shall be submitted to and approved in writing by the Local Planning Authority. The manual shall include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. The approved surface water drainage system shall thereafter be maintained in accordance with the approved details.
 - 12) Prior to the commencement of development, including any works of demolition, an Employment and Skills Plan shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved Employment and Skills Plan.
 - 13) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
 - 14) No part of the development shall be first occupied until as-built drawings of the implemented surface water drainage scheme/system together with a completion report prepared by an independent engineer that confirms that the scheme was built in accordance with the approved drawings and is fit for purpose have been submitted to and approved in writing by the local planning authority.
 - 15) No part of the development shall be first occupied until provision has been made within the site in accordance with plans and details to be first submitted to and approved in writing by the Local Planning Authority to prevent surface water draining onto the public highway.
 - 16) The construction works, including deliveries to / from the site associated with construction shall, be limited to 08:00 hours and 18:00 hours on Mondays to Fridays inclusive; 08:00 hours and 13:00 hours on Saturdays; not at any time on Sundays or Bank Holidays except without the express authority of the Local Planning Authority.
 - 17) No part of the development shall be first occupied until such time as the vehicular access serving the development has been constructed in

accordance with the approved details shown on approved Drawing No. 041.0071.001 Rev. A

- 18) No part of the development shall be first occupied until footway improvements are provided in accordance with approved Drawing No. 041.0071.004 - Visibility Splay and Junction Improvements at The Street/Tye Lane Junction and Drawing No. 041.0071.006 – Potential Footway Link on Tye Lane
- 19) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources (as described in the glossary at Annex 2 of the National Planning Policy Framework) unless it can be demonstrated that a fabric-first approach would achieve an equivalent energy saving. Details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase or sub phase begins. The development shall be implemented in accordance with the approved details and timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority
- 20) No part of the development shall be first occupied until a strategy for the provision of the highest available headline speed of broadband provision to future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account the timetable for the delivery of 'superfast broadband' (defined as having a headline access speed of 24Mb or more) in the vicinity of the site (to the extent that such information is available). The strategy shall seek to ensure that upon occupation of a dwelling, the provision of the highest available headline speed of broadband service to that dwelling from a site-wide network is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway. Unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure, the development of the site shall be carried out in accordance with the approved strategy
- 21) No part of the development shall be first occupied until a scheme for the provision of facilities to enable the charging of electric vehicles to serve the approved dwellings shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented in accordance with the approved details and the charge points shall thereafter be permanently retained and maintained in good working condition
- 22) The development hereby permitted shall be carried out in accordance with the soil handling measures and the proposed use of on-site soils as set out in the indicative Soils Resource Strategy & Sustainability Options Appraisal, prepared by Henry Adams LLP in June 2021.
- 23) Should any contamination be found during the course of construction, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:
 1. A Preliminary Risk Assessment which has identified: all previous (historical) uses; potential contaminants associated with those uses; a

conceptual model of the site indicating sources, pathways and receptors; potentially unacceptable risks arising from contamination at the site.

2. A Site Investigation Scheme, based on (1) above to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. Based on the Site Investigation Scheme and the detailed risk assessment (2), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A Verification Report providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

5. Any changes to these components, (1) to (4) require the express written consent of the Local Planning Authority.

The scheme shall be implemented as approved and, prior to commencement of any construction work (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), a Verification Report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of that remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification report, and for the reporting of this in writing to the Local Planning Authority.

- 24) Prior to the commencement of development a scheme for incidental extraction of the safeguarded mineral resources underlying the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be limited to:
- an assessment of the extent, volume and practicability for incidental extraction, which shall be based on detailed ground investigations; and
 - the methodology for which any identified incidental mineral extraction would be carried out, which shall include a detailed programme/phasing of extraction, and details of the proposed destination/use of the mineral

End of Schedule