



Appeal Decision

Site visit made on 28 June 2022

by Christina Downes BSc DipTP MRTPI

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

Decision date: 25th July 2022

Appeal Ref: APP/L3815/W/22/3290791

Former Portfield Quarry and Uma House, Shopwhyke Road, Shopwhyke, Chichester PO20 2AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Bellway Homes Ltd against the decision of Chichester District Council.
 - The application Ref 21/02547/DOC, dated 23 July 2021, sought approval of details pursuant to condition No 3 of a planning permission Ref O/19/02030/FUL, granted on 12 June 2020.
 - The application was refused by notice dated 1 December 2021.
 - The development proposed is the erection of 88 dwellings together with associated vehicular and pedestrian access, car parking and landscaping.
 - The details for which approval is sought are the proposed means of foul water sewerage disposal, including the proposals for associated off-site infrastructure improvements.
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Decision

1. For the reasons given below, the appeal is dismissed.

Reasons

2. The appeal site is part of the Shopwhyke strategic allocation for a sustainable urban extension on the eastern side of Chichester. Policy 16 in the *Chichester Local Plan Key Policies: 2014-2029* (the LP) applies a number of criteria for development, including that it will depend on the provision of infrastructure for adequate wastewater conveyance and treatment to meet strict environmental standards. There is no dispute that the appeal site is within the catchment of the Apuldrum Wastewater Treatment Works (WwTW). However, the wording of policy 16 indicates that there is no expectation that the allocation will necessarily drain to this particular WwTW. Indeed, policy 12 in the LP seeks to ensure that development proposals in the catchment of Apuldrum have no adverse impact on the water quality of Chichester Harbour.
3. The Apuldrum WwTW discharges into Chichester Harbour, where there are a number of designated sites of international importance to wildlife. In order to protect the sensitive estuarine environment and maintain water quality, the discharge from this WwTW is very strictly controlled through the limitations of the Environmental Permit. The Council's evidence indicates that having regard to the environmental constraints, by 1 January 2021 there was no spare capacity at the Apuldrum WwTW and this remained the situation at 1 January 2022. As I understand it this is calculated from a comparison of the dry weather flows to the WwTW and the Environmental Permits for the period 2017

and 2021. The Appellant considers that as the LP was adopted prior to this the allocation of the appeal site should have been taken into account in assessing the infrastructure needs of the area. I expect that it was, but it does not follow that foul water disposal would necessarily discharge to Apuldrum. Indeed, as indicated above the policies indicate otherwise. In the circumstances it is reasonable to surmise that the existing capacity at the WwTW takes account of new housing built in the catchment prior to 2021 but not subsequently.

4. The *Adopted Surface Water and Foul Drainage Supplementary Planning Document* (2016), includes further guidance on the constraints to wastewater infrastructure. However, it indicates that this is mainly relevant to smaller developments with the strategic allocations being directed through the LP. The *Joint Position Statement by the Environment Agency and Southern Water* (2018) indicates that major developments outside the settlement boundary of Chichester are expected to drain to alternative WwTWs, including Tangmere. This would include the appeal site.
5. Notwithstanding the above, the Appellant's case is that the site should discharge to Apuldrum. The justification for this is that it is within the catchment of that WwTW and that the development would result in no net increase in foul water flows when compared with the past uses. Setting aside whether this is the relevant consideration for this strategic location, the evidence to support it comes from a *Technical Note* dated 30 November 2020 by Stuart Michael Associates, Consulting Engineers. I have also had regard to the *Foul Drainage Technical Note* produced by the Appellant in September 2021. I do not doubt the professional expertise behind these technical documents, but I am concerned about the assumptions relating to the historic employment level on which they rely.
6. The previous use was as offices and open storage. It appears that foul water and some surface water runoff drained to 2 or 3 cess pits on the site and that these were emptied between 2 and 4 times a year, with the contents being conveyed by tanker to Apuldrum WwTW. I accept that there could have been multiple trips each time and that the size of the tankers is unknown. The calculated annual discharge of foul water is 8,401 m³. My main concern about this is that the calculation relies on the maximum potential level of employment for the Use Class B1(a) and B8 uses, which would amount to some 400 employees. This is not the relevant measure when comparing the past level of wastewater generated by the site with the future level from the housing development.
7. The Transport Assessment associated with a planning application for student housing on the site in 2016 indicates that existing peak trip rates amounted to about 30 vehicles. I agree with the Appellant that some employees would have probably travelled by other means. However, on the above evidence that would have had to mean that most of the 400 employees travelled by non-car modes. This seems to be rather unlikely in view of the location of the site. Indeed, the employment of 400 people would have been a large number for a site that appears to have included significant areas of open storage. The Appellant's representations give little comfort that this does provide a realistic assessment of the actual, as opposed to the hypothetical, level of employment. The appeal statements refer to use of the "fall-back position" based on the size of the previous uses and the outcome is described as a "worst-case scenario".

8. In the circumstances, I do not consider that the historic flows in the 2020 Technical Note can be relied upon. Without this information I am unable to conclude with any confidence that there would be no net increase in foul flows resulting from the appeal development. This is especially the case given that the difference between the two was only calculated to be some 534 m³. I acknowledge that Southern Water is satisfied on the matter and that the Environment Agency has raised no objection. However, I am the decision maker in this case and taking a precautionary approach I cannot conclude that the appeal proposal would not have a likely significant adverse effect on the protected habitats of Chichester Harbour.
9. The Appellant has referred to a recent appeal decision relating to development at West Wittering (APP/L3815/W/21/3286315). In this case the sewerage would be treated at the Sindlesham WwTW where there was confirmed to be capacity to accept the foul water flows from the proposed development. The Inspector's comments about the role of statutory undertakers were made in the context of objections from local residents concerned about discharges to Chichester Harbour. In the current situation there would be capacity at Tangmere WwTW that could accommodate the wastewater flows from the appeal site.
10. The Appellant has highlighted that in order to access Tangmere WwTW there would need to be a new sewer laid under Shopwhyke Road and Tangmere Road, which would cause considerable disruption over a distance of around 3km. The consequent delay to housing delivery was also mentioned. About a year ago permission was granted to discharge to Tangmere WwTW. It is difficult to understand why such a recent proposal was made without any technical assessment or costings. The Appellant claims it would threaten the viability of the scheme which already has a non-policy compliant level of affordable housing. However, I have no viability evidence before me to reach a judgement on whether that would be the case or not.
11. For all of the reasons given above, I conclude that the appeal proposal is not acceptable and would conflict with policies 12 and 16 in the LP. In view of this conclusion, it seems to me unnecessary to address the matter of nutrient neutrality. I have considered all other matters in the representations but have found nothing to alter my conclusion that the appeal should not succeed.

Christina Downes

INSPECTOR