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## Appeal Decisions

Site visit made on 5 September 2022

**by Thomas Bristow BA MSc MRTPI AssocRICS**

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

**Decision date: 1<sup>st</sup> November 2022**

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### **Appeal A, Ref: APP/L3815/W/21/3285978**

#### **Bethwines Farm, Blackboy Lane, Fishbourne PO18 8BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Hybrid Planning & Development against Chichester District Council.
  - The application Ref 21/02553/FUL is dated 20 August 2021.
  - The development proposed is described on the application form as 'change of use of land to provide facility for 'doggy day care', including the provision of 3 no. portakabins and perimeter fence.'
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### **Appeal B, Ref: APP/L3815/W/22/3297859**

#### **Bethwines Farm, Blackboy Lane, Fishbourne PO18 8BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under article 3(1) and Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
  - The appeal is made by Fishbourne Housing Limited against the decision of Chichester District Council.
  - The application Ref 22/00575/PA3R, dated 1 March 2022, was refused by notice dated 22 April 2022.
  - The development proposed is described on the application form as 'change of use of 501 sqm of the existing agricultural building to storage use.'<sup>1</sup>
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### **Appeal C, Ref: APP/L3815/W/22/3299202**

#### **Bethwines Farm, Blackboy Lane, Fishbourne PO18 8BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Fishbourne Housing Limited against the decision of Chichester District Council.
  - The application Ref 22/00142/FUL is dated 19 January 2022.
  - The proposal is described on the application form as 're-grading of existing agricultural land to create natural grass and wetlands to reduce nitrogen load at Chichester Harbour.'<sup>2</sup>
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## **Decisions**

1. Appeals A, B and C are dismissed (and planning permission or prior approval for the proposed schemes is refused).

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<sup>1</sup> 'Change of use of existing agricultural building to storage use (B8)' as in the Council's decision notice.

<sup>2</sup> 'Change of use of the land (in perpetuity) from agriculture to natural grass and wetlands for nitrate offsetting' as in the Council's decision notice.

### **Applications for costs**

2. Anne Stephens, the freehold owner of Bethwines Farm, has made an application for an award of costs against the appellants in respect of appeals A and B. The Council has made an application for an award of costs against the appellant in respect of appeal C. Those applications are the subject of separate decisions.

### **Preliminary matters**

3. Appeals A, B and C relate to different elements of Bethwines Farm, an agricultural holding of some 47.34ha. To some extent the physical and policy context relevant to one appeal is relevant to all three. The appellant has referred to the proposal to which appeal B relates as 'part of a wider planning strategy for the whole site'. I have therefore dealt with these three appeals collectively, drawing distinctions between them as necessary.

### *Appeal types*

4. Appeal A is against the failure of the Council to reach a decision within 8 weeks pursuant to article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended ('DMPO'). The Council has set out at appeal that, had they been in a position to do so, they would nevertheless have refused permission for the proposal. In part that would have been on the basis of the adequacy of the information supporting the scheme. The onus falls principally on an applicant to substantiate their case (section 62(3) of the Town and Country Planning Act 1990 as amended, the '1990 Act').
5. Nevertheless appeal A is not in respect of a validation dispute under article 12 of the DMPO; application Ref 21/02553/FUL was validated on 3 September 2021. There is also correspondence before me on behalf of the appellant of 26 October 2021 setting out their intention to proceed with appeal A 'without the additional documentation'. Appeal A was made on 1 November 2021. That is only three days after an 8 week period from 3 September 2021, despite the Planning Practice Guidance ('PPG') recommending that 'before making any appeal the applicant should first consider re-engaging with the local planning authority...'.<sup>3</sup> A planning appeal should be a last resort.
6. Appeal C, however, relates to a validation dispute. The application in that instance was made on 19 January 2022. The Council wrote to the appellant on 7 February 2022 explaining that it was, in their view, invalid. On 15 February 2022 the appellant sent notice to the Council under article 12 of the DMPO disputing that view. There is subsequent correspondence between the main parties on that matter before me. As with appeal A, the Council have explained at appeal that they would have refused permission for the proposal. The PPG sets out that an appeal in that context will 'consider the merits of the validation dispute and the appeal itself'.<sup>4</sup> In this instance it is more logical to approach that in reverse order.

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<sup>3</sup> Reference ID: 16-011-20140306.

<sup>4</sup> Reference ID: 14-053-20140306.

7. In relation to appeal B, subject to various limitations and conditions, Schedule 2, Part 3, Class R to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO') enables the change of use of 'agricultural buildings to a flexible commercial use', including land within the curtilage thereof. In the course of the appeal Class R was amended via provisions which came into force on 1 August 2021.<sup>5</sup> Those provisions reflect changes to the Town and Country Planning (Use Classes) Order 1987 as amended (the 'UCO') since 2015. However 'storage or distribution', use class B8, remains referred to in Class R, paragraph R.(a).
8. The GPDO establishes, in principle, that certain forms of development are permissible. As such section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended (the '2004 Act'), which in other contexts, including in respect of appeals A and C, requires that proposals are determined in line with the development plan unless material considerations indicate otherwise, does not apply in respect of appeal B. I have nonetheless had regard to the development plan insofar as relevant to the provisions of Class R and to the matters in dispute in appeal B. GPDO paragraph R.3.(1)(b) sets out that the provisions of GPDO paragraph W apply in respect of Class R, which include, at paragraph W.(10), that regard must be had to the National Planning Policy Framework (updated 20 July 2021, the 'NPPF').
9. Appeal B relates to the Council's refusal to grant prior approval for the conversion of a building via decision notice dated 22 April 2022. Their reasons relate both to whether the scheme would fall within the remit of what is permissible under Class R, and to the effects of the scheme in terms of prior approval matters. Again there is some dispute between the main parties as to whether the information sought by the Council was necessary, and when that was sought in the process. I will return to those matters.

### *Planning context*

10. Much of the evidence before me relates to the history of litigation here, and to the potential implications of an option agreement. I have, however, focussed squarely on planning matters. That history relates principally to private legal matters. I note a similar distinction is drawn between contractual, or ordinary and natural, and planning phraseology in the *Fishbourne Developments Limited* judgement itself.<sup>6</sup> I have determined appeals A, B and C individually on their merits. There is, however, an extensive planning history to Bethwines farm. Notably, this appeal follows an unsuccessful appeal in 2021 by Fishbourne Developments Ltd., as opposed to Fishbourne Housing Ltd., for the construction of 35 dwellings.<sup>7</sup>
11. The development plan includes policies of the Chichester Local Plan: Key Policies, 2014-2029 (adopted July 2015, the 'Local Plan') and of the Fishbourne Neighbourhood Plan (made March 2016, the 'FNP'). In respect of appeal A the appellant states that the site 'is otherwise identified in the HELAA [the Council's 2021 Housing and Economic Land Availability Assessment] for residential

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<sup>5</sup> The Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No. 2) Order 2021.

<sup>6</sup> *Fishbourne Developments Limited v Stephens* [2020] EWCA Civ. 1704, paragraph 40.

<sup>7</sup> Ref. APP/L3815/W/20/3266072.

development'. Part of Bethwines Farm falls within parcel 'HFB0004a', which is illustrated on the supporting plan as 'developable'. However the site is not allocated in the Council's Site Allocation Development Plan Document (adopted January 2019) or the FNP.

12. None of the proposals before me relate to housing provision directly. The HELAA is an evidential document designed to inform, rather than to constitute, the development plan. In my experience land availability assessments typically consider land which, if developed, would be capable of significantly exceeding development needs (by way of a proportionate assessment for a plan-making stage). Albeit that I understand a review of the Local Plan is in progress, there is no evidence before me indicating that land at Bethwines Farm is being progressed as an allocation.

### **Main issues**

13. Against the context above, in respect of appeal A the main issues are (i) whether the site is an appropriate location for the development proposed, with particular regard to local character, (ii) the effect of the proposal on the living conditions of those nearby, with particular regard to noise (iii) the effect of the proposal on the safe and efficient operation of the surrounding highway network, and (iv) whether suitable provision would be made for surface water drainage and waste management.
14. In respect of appeal B the main issues are (i) whether or not it has been demonstrated that the scheme would be permitted development, and (ii) the transport, highways and noise impacts of the development proposed.
15. In respect of appeal C the main issues are (i) whether the proposal amounts to a material change of use in the land requiring planning permission, (ii) whether the appeal site is a suitable location for the development proposed, and (iii) whether it was reasonable for the Council not to have validated application Ref. 22/00142/FUL.

### **Appeal A, reasons**

#### *Location*

16. The site to which appeal A relates is a right-angled parcel of land of about 0.95ha. It includes an element of the part consolidated part gravelled access to the loose cluster of buildings at Bethwines Farm off Bethwines Close. Otherwise the site, as with much of the holding, is open agricultural land. Bethwines Close itself, located behind properties flanking Blackboy Lane, comprises a handful of detached single-storey dwellings. In layout and design they typify late twentieth century suburban development. Being modest in scale and of a low density they sit comfortably at the rural edge of the village.
17. The topography rises around Clay Lane northwards to the A27 and South Downs beyond. The landform here, however, tracking along the railway westwards from Fishbourne, is broadly level. Fields are relatively large and regular. They tend to be delineated by drainage ditches and occasional trees rather than by substantial hedgerows. There are relatively few trees, albeit that there are wooded areas towards the north and also further away to the south around Bosham Hoe. As such, and given the setback of the cluster of building

at Bethwines Farm from Bethwines Close, there are open vistas of the countryside in this location. There is therefore a clear sense of having moved from village to countryside in only a short distance.

18. The settlement boundary to Fishbourne here is drawn around the plots of properties off Bethwines Close, tracking southwards along Blackboy Lane. The appeal site aligns with the settlement boundary as far as the plot of No 8 Bethwines Close, thereafter cutting perpendicular westwards to it. In respect of the Local Plan I understand that the settlement boundary to what is identified in Local Plan policy 2 as the 'Service Village' of Fishbourne was carried forward from the Chichester District Local Plan 1999. The FNP sets an amended settlement boundary, incorporating some development by Clay Lane. Nevertheless the settlement boundary set in the Local Plan and FNP, insofar as it is relevant to the appeal site, still accurately delineates the physical distinction between the built form of Fishbourne and its rural surroundings. Accordingly the site falls within the countryside within the terms of Local Plan policy 45, and as experienced on the ground.
19. In brief the proposal is to create a northern spur off the existing access next to the plots of Nos 11 and 10 Bethwines Close to serve the dog day care facility. There would be hardsurfaced parking, three profiled steel containers providing indoor facilities, a partially enclosed veranda around them, and what is annotated on plan No. 18.0188-A-PA03 Rev.1 as a 'dog play area (hard landscape)'. There is also reference in the information before me to an 'ancillary shop'. The site would be enclosed by a 1.8m high metal fence appearing of chain link design.
20. Local Plan policy 45 states that 'within the countryside, outside Settlement Boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements'. On a plain reading, by virtue of the conjunction 'and', development will only benefit from support via policy 45 where it both requires a countryside location in the first instance, and also accords with other criteria in the second instance.
21. In the abstract a countryside location may enable more space to be given over to a dog day care facility than in a tight-knit urban location. I am told that the appellant has discussed the proposal with several prospective end users. I acknowledge that there are various buildings of differing eras and designs at Bethwines Farm, and that profiled metal containers would not be intrinsically discordant with certain agricultural buildings. I also note the appellant's argument that 'the proposed portakabins are temporary in nature and could be relocated when the use of the land ceases'. There is some suggestion that the scheme is a 'meanwhile use'.
22. Nevertheless, the information before me falls far short of justifying the requirement for a countryside location. Population density, and therefore in all likelihood pet density, is higher in urban areas. Given also the constraints of the built environment, demand for such facilities is likely highest elsewhere. There is no information before me as to what demand exists for such a facility located in the countryside, adjacent to a Service Village, or in relation to the prevalence of comparable facilities in other locations.

23. Typically the market value of land is greater within built-up areas than in the countryside. However there is nothing to substantiate that sites or buildings of broadly the scale proposed here do not exist, or would be unviable for such an operation, in other locations. There is also no discernible connection between the use proposed and the countryside. That is in contrast to land-based activities or farm diversification which is intrinsically location specific. Although some nearby residents might make use of the facility, much trade could draw from a far wider and dispersed area.
24. Various development plan policies and elements of the NPPF accord in-principle support to development beneficial to the rural economy (including Local Plan policy 3, FNP policy E1 and NPPF paragraph 84). However that support is qualified, in the case of FNP policy E1 requiring that small scale business proposals 'contribute to the character and vitality of the local area'. Moreover no one policy or element of the NPPF automatically takes precedence over any other. Local Plan policy 48 sets out how development should 'respect and enhance the landscape character of the surrounding area and site...'. Similarly criterion b) of NPPF paragraph 174 sets out how planning should recognise the intrinsic character and beauty of the countryside.
25. The proposal would inevitably overwrite what is currently open and natural land consistent with its surroundings with a substantial artificial intervention. I accept visual effects could be moderated by the use of muted materials, however the surfaced play area itself would be substantial (approximately 50 by 90 metres).<sup>8</sup> In conjunction with the new access spur and parking provision, the proposal appears comparable to the existing footprint of, and surfacing around, existing buildings at Bethwines farm. It would be more consolidated in form than existing properties at Bethwines Close described above.
26. The site and buildings would be angular, geometric and functional, paying no real regard to their countryside setting. That insensitive appearance would be accentuated by utilitarian fencing; openness is characteristic here. The proposal would be visible from various public vantage points along Blackboy Lane to the south and Clay Lane to the north, in addition to multiple private vantage points nearby. From those perspectives the scheme would serve to connect the village and buildings at Bethwines Farm which presently sit staunchly in the countryside. A temporary use would limit longer-term landscape effects. However there is no indication before me as to the duration for which the development proposed is intended to be operational, and in many respects the proposal is well-nigh permanent (for example access and parking provision, hardsurfacing and fencing).
27. I therefore conclude that the appeal site is not an appropriate location for the development proposed and that it would be harmful to local character. It would conflict with the relevant provisions of Local Plan policies 45 and 48, FNP policy E1 and NPPF paragraph 174.

### *Living conditions*

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<sup>8</sup> Plan No. 18.0188-A-PA02 Rev.2.

28. Criterion 2 of FNP policy E1 sets out how development should not increase noise levels to an extent that they would unacceptably disturb the occupants of nearby residential property. Similarly criterion f) of NPPF paragraph 130 guides that development should 'create places that are safe, including and accessible which promote health and wellbeing, with a high standard of amenity for existing and future users'. NPPF paragraph 185 sets out how planning should ensure that new development is appropriate for its location. Criterion a) of NPPF paragraph 185 is that development should 'mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development...', with the PPG providing guidance on the management of noise in planning.
29. I acknowledge that agricultural activities will inevitably generate some noise, and that there are also separate provisions related to noise which amounts to a statutory nuisance under the Environmental Protection Act 1990 as amended. In order to operate, the facility would need to secure a licence pursuant to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 as amended (the '2018 Regulations'). NPPF paragraph 188 indicates that it should be assumed that regimes outside of planning will operate effectively, and individuals would make an informed choice as to whether to work in such an environment.
30. I note that the proposal is relatively generous in terms of outside space. It is also the appellant's intention to provide facilities for 'up to' 50 dogs, some present for short periods of time, catered for by 'at least' 3 members of staff (as set out in the supporting Design and Access Statement). Staff and animal numbers may be below capacity at times. I further note the appellant's position that 'many details of the application could be secured via condition, including operational hours (and hours of any lighting and to limit noise)...'.
31. However, a proposal may generate noise which, although not amounting to statutory nuisance, nevertheless entails adverse effects. Licensing and planning perform separate functions. The 2018 Regulations make reference to noise only insofar as animal wellbeing is concerned. It is not for me to reach a judgement as to whether the proposal would be licensable.
32. Nevertheless the appellant's case fails to engage in any meaningful way with the policy context set out in paragraph 28 of this decision. There is no evidence before me in respect of baseline noise levels, characteristics, potential implications of the scheme, or as to the effect that any management or attenuation measures might have. Noise associated with agriculture is typically confined to particular times of year and episodic, the sun doing much of the work for the rest of the time. Agricultural activities and the noise they occasionally entail are, moreover, part and parcel of the countryside. They tend to be characterised by machinery generating more-or-less continuous mechanical noise. That is inherently less intrusive than noise of an episodic nature such as dogs barking or speech.
33. Even with highly effective management and defined operating hours the proposal would inevitably generate significant additional noise set against current circumstances, and noise of a different character. That would result not only from barks and other animal noises, but also from commands being given,

conversations and vehicular comings and goings. As set out above, the site is broadly level and close to several dwellings. At its closest the exercise area would be some 22 metres away from the plot of No. 9 Bethwines Close, with the new access spur closer still.<sup>9</sup>

34. At present the site is open. There is only a modest hedge, consistent with prevailing landscape character, separating the site from the plots of nearby properties. No intervening structures or attenuation are proposed as opposed to a chain link security fence. The site is also to the west or south-west of nearby properties such that sound is likely to be carried towards them given the prevailing wind direction.
35. The noise resulting from the scheme in that context is likely to be intrusive or disruptive, i.e. resulting in material changes in behaviour (such as closing windows at times). Given the foregoing it would not be possible to impose conditions that would ensure acceptable living conditions. Noise effects cannot be quantified, and in that context imposing restrictions may unreasonably compromise the viability of the proposed use. I therefore conclude that the proposal would adversely affect the living conditions of those nearby in conflict with the relevant provisions of FNP policy E1 and of NPPF paragraphs 130 and 185.

### *Highways*

36. Local Plan policy 9 seeks to ensure that development is served by appropriate access, does not create or add to problems of safety or congestion, and sets out that any residual cumulative impacts should not be severe. NPPF paragraph 111, diverging from the phrasing in earlier iterations, explains how development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
37. Trite to say, but farming involves various vehicular movements on and off-site. Certain users of the facility may be relatively local and may arrive on foot. Fishbourne railway station is not too distant and there are bus services running along Salthill Road nearby. Amongst other things Local Plan policy 8 seeks to ensure that new development is well located and encourages the use of sustainable modes of transport. A travel plan geared towards minimising private vehicular usage could be secured by way of a planning condition. I also note the appellant's intention to ensure 'staggered start and finish times' to even out associated traffic flows, and that the intensity of use would vary.
38. However travelling with animals and associated paraphernalia via private car is likely to be preferable, or more convenient, to many than the use of public transport. Consistent with my reasoning in respect of the second main issue in this case, vehicular movements associated with agriculture are typically episodic, seasonal and occasional. That is in contrast to those that would typically be expected of a dog day care facility intended to cater for up to 50 dogs at any one time. Vehicular movements associated with the proposal would arise daily, subject to operating hours, on a more-or less regular basis.

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<sup>9</sup> Plan No. 18.0188-A-PA02 Rev.1.

39. As set out above Bethwines Close comprises a handful of residential dwellings. On-street parking is limited by virtue of the need to keep driveways free from obstruction. I also saw at the time of my mid-morning site visit that on street parking occurs along Bethwines Close in the absence of parking restrictions. At points that served to limit the available space such that only one vehicle could pass at a time. Although a snapshot in time, with regard to the representations before me, there is nothing to suggest that is atypical. The proposal is intended to be served by only two parking spaces, notwithstanding that there may be some informal space around for vehicle manoeuvring.
40. There is furthermore no substantive evidence before me in terms of existing traffic flows, design capacity of the highway network or parking stress, anticipated effects of the proposal, or in terms of visibility or suitability of junctions to accommodate the uplift that would result from the scheme. In that context it has not been demonstrated that the proposal would ensure the safe and efficient operation of the surrounding highway network, in conflict with the relevant provisions of Local Plan policy 9 and NPPF paragraph 111.

#### *Drainage and waste*

41. Criterion 3 of Local Plan policy 40 sets out that development should take 'into account the need for on-site waste reduction and recycling.' Criterion 6 seeks to ensure proposals adapt to climate change such as through the provision of sustainable urban drainage systems (such an approach being encouraged, rather than mandated). FNP policy D1 includes, within the ambit of 'good design', adopting the principles of sustainable drainage. NPPF paragraph 167 sets out initially that development should not increase flood risk elsewhere.
42. As in respect of the first three main issues, there is scant information as to how drainage, waste water and waste more generally are intended to be dealt with. The proposal would represent a significant artificial intervention in the landscape, thereby inevitably affecting the ability of the ground to absorb liquid. There are references in the information before me to localised evidence of flooding here. As addressed more fully in respect of appeal C, the site falls within a Nitrate Vulnerable Zone and relatively close to an overlapping set of ecologically protected sites. Nitrates and other nutrients, arising from agricultural practices, effluent or otherwise, entering the catchment of such sites can damage the ecological integrity for which they are protected.
43. At face value the scheme would fail to accord with the policy context set out in paragraph 41 above. However there is no evidence before me indicating other than that the site falls within flood zone 1, i.e. at 'low probability' of flooding.<sup>10</sup> I accept ground and sub-soil conditions are unlikely to prove suitable for the use of soakaways,<sup>11</sup> however localised flooding may have had multiple causes. There is nothing to indicate that suitable drainage could not be achieved that emulates natural water run off characteristics. There is no indication that the site is identified as a critical drainage area, including with reference to FNP policy SD3 'Development Constraints'.

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<sup>10</sup> PPG Reference ID: 7-078-20220825.

<sup>11</sup> As noted in the Soakage Testing Report prepared by Geo-Environmental, 14 May 2014.

44. With a site area fractionally less than one hectare, the proposal is not major development as defined in the DMPO (and therefore neither a site specific flood risk assessment nor sustainable drainage systems are required within the terms of NPPF paragraphs 167 to 169). There is no quantification before me of the relative effect of removing the land from arable use and potential implications of animal excreta in terms of nutrients. However there is equally nothing to indicate that such waste could not be managed, in conjunction with the provisions of any licence under the 2018 Regulations, in such a way as to have broadly comparable, potentially improved, effects.
45. I appreciate the Council's desire to have some form of high-level drainage and waste management principles in place. However in my view these matters are capable of being addressed the use of suitably-worded planning conditions, were the proposal acceptable as a whole. Hardsurfacing need not be impermeable and a subsequently-agreed management plan could address on-site cleaning and off-site waste transportation. There also appear, in theory, to be approaches that could be taken to deal with waste sensitively and in a low-impact manner.<sup>12</sup> In that context, I conclude that no conflict would arise with the relevant provisions of Local Plan policy 40, FNP policy D1 or NPPF paragraph 111, i.e. that the proposal could be made acceptable in those respects.

#### *Other matters*

46. I acknowledge that the proposal would have certain benefits, chiefly in generating employment during construction and operation. I agree with the appellant that 'life can be very busy and complicated at times', and that the proposal would be of social benefit to some in that context. I have also set out previously how certain provisions of the development plan and NPPF are, in broad terms and not unconditionally, supportive of economic growth and a prosperous rural economy. However similar benefits would arise from a multitude of schemes, including those with lesser effects. I have moreover set out in respect of the first main issue that there is no compelling justification for this proposal in this location.
47. Criterion d) of NPPF paragraph 112 sets out how development should, amongst other things, allow for access by service and emergency vehicles. Many historic agricultural uses are set in relatively inaccessible locations, noting that the appellant describes the nearby building to which appeal B relates as 'isolated', and are not served by access that would meet modern standards in terms of emergency access. As referenced in the representations of West Sussex County Council as regards access width and that the nearest fire hydrant is some 180 metres away, that is the case here.
48. Theoretically compliance with the relevant provisions of the Building Regulations 2010 as amended, which apply independently of planning, might be achievable. That could, for example, be through provision of an alternative emergency water supply closer by, or by ensuring that site access is provided to a certain standard. Nevertheless even were the proposal capable of being

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<sup>12</sup> As referenced in the representations from Environmental Health in respect of the scheme, reflecting approaches adopted elsewhere.

made acceptable in that respect through conditions, that would be neutral in my assessment of the scheme.

49. Best and most versatile agricultural land ('BMV'), as defined in the glossary to the NPPF, includes that which is given an agricultural land classification ('ALC') of 1, 2 and 3a. The Council sets out that high level Natural England/ Department for Environment, Food and Rural Affairs mapping indicates that the site may be BMV. Criterion 4 of Local Plan policy 48 sets out how it should be demonstrated that development of poorer quality agricultural land has been fully considered in preference to the use of BMV, FNP policy E2 similarly seeks to protect BMV, and criterion b) of NPPF paragraph 174 recognises the various benefits thereof.
50. I accept that taking land out of active agricultural use may have a beneficial effect in terms of nutrient generation and ecological effects (dependent on what subsequent use is proposed, and that there are other benefits to maintaining land in agricultural use including food security). However that is an abstract or theoretical argument. It may be true of a multitude of sites and schemes. Here there is no definitive information as to whether the proposed facility would relate to BMV agricultural land or not. Even if the site were not BMV, given the lack of information before me in this regard as reflected in paragraph 44 of this decision, again that would be essentially neutral in my assessment.
51. Consequently the foregoing other matters would not outweigh the significant harm that would result from the scheme by virtue of its unacceptable location and adverse effects on local character, the surrounding highway network, and as regard the living conditions of those nearby. No other material considerations justify allowing the appeal.

## **Appeal B, reasons**

### *Statutory context*

52. Application Ref 22/00575/PA3R was not for a certificate of lawfulness of existing use. It is nonetheless legitimate to consider whether the development proposed falls within the scope of Class R, and thus benefits from permitted development in the first instance. Class R relates to 'an agricultural building'. Paragraph R.1. specifies that an agricultural building must have been 'used solely for an agricultural use as part of an established agricultural unit- (i) on 3rd July 2012...'. It also makes provision for where a building was either not in use on that date, or where it was brought into use after that date. GPDO Schedule 2, Part 3, paragraph X defines both 'agricultural building', 'agricultural use' and 'established agricultural unit' as referring to agriculture as defined in section 336(1) of the 1990 Act, and for the purposes of a trade or business.
53. As further set out in paragraph R.1.(b) development is not permitted by Class R if 'the cumulative floor space of buildings which have changed use under Class R within an established agricultural unit exceeds 500 square metres.' Certain conditions applicable to Class R rights are set out in paragraph R.3. In brief, where Class R would apply to a scheme or schemes amounting to in excess of 150 square metres, prior approval will be required in respect of four matters, subject to the provisions of paragraph W. In that context the Council

refused prior approval on the basis of 'transport and highways impacts of the development' and 'noise impacts of the development', paragraphs R.3.(1)(b)(i) and R.3.(1)(b)(ii), principally on the basis of inadequate information on those matters.

### *The site*

54. The building to which appeal B relates is identified on plan No. EX01, annotated as 'main barn', with elevations illustrated on plan No. '1205-DPA-002, Revision A'. In form it is a large steel portal barn of standardised design, clad with profiled metal sheeting. It faces a smaller brick building on the opposite side of the partially consolidated or gravelled track linking the Farm with Bethwines Close. It is close to the appeal site in respect of appeal A.
55. Aside from a ramshackle plyboard-clad lean-to attached to the brick building, and what are shown as a bunker and shed on the plan referenced above, both of which are modest and somewhat dilapidated, it is the closest substantial building of the loose cluster at Bethwines Farm to the site access. I understand permission was granted by the Council in 2016 for a pitched roof to the 'bunker', albeit that has not been effected.<sup>13</sup> At the time of my site visit the barn was used for the storage of a miscellany of items including building materials, logs, vehicles and machinery.
56. As reflected in its appearance and condition, although it has possibly been relocated from elsewhere previously as is not untypical of such buildings, the barn is relatively modern. That tallies with the barn's installation at some point following the grant of prior approval in 1996.<sup>14</sup> I understand that the Council confirmed, via decision notice dated 7 April 2022, that their prior approval was not required for its demolition.<sup>15</sup>

### *Whether permitted development*

57. There is little history before me in respect of the barn's creation, the function that it has served over time, or its relationship to the operations at Bethwines Farm. I acknowledge that there is no substantive evidence behind the appellant's statement, with reference to Class R, paragraph R.1. that 'the premises were in use solely for agricultural purposes on 3rd July 2012, and the agricultural use remains extant, and has not been abandoned'. As noted above the barn is presently used for miscellaneous storage, rather than an agricultural use being readily discernible. Although supposition, the proposal to demolish the building referred to above is also suggestive of the barn having become surplus to requirements.<sup>16</sup>
58. Physically, however, the building is what anyone would describe as a barn. I understand that it was originally intended to store straw. It falls within the loose cluster of buildings at Bethwines Farm, a substantial agricultural holding. There are representations before me attesting to a long continuity of farming here and to the composition of the tenant farmer's 2021 harvest. There is also no evidence that another use has been permitted here in place of agriculture.

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<sup>13</sup> Ref 16/00961/FUL.

<sup>14</sup> Ref 96/01295/PNO.

<sup>15</sup> Ref FB/22/00609/PNO.

<sup>16</sup> Notwithstanding the provisions of GPDO Schedule 2, Part 6, Class A, paragraph A.2(5).

No reasonable onlooker would imagine, looking at the barn and its context, that an agricultural use has permanently ceased (or that a relatively modern barn in good condition would not be fit for such a purpose in this location). The use of land and buildings for agriculture is, furthermore, not development.<sup>17</sup> Therefore, on the balance of the information before me, the barn may reasonably be described as an agricultural building within the terms of Class R.

59. The proposal was originally for the 'change of use of 501 sqm of the existing agricultural building to storage use'. That would inherently exceed the 500 sqm limit set via GPDO Schedule 2, Class R, paragraph R.1.(b). The appellant explains that they were 'unable to confirm the size of the barn before the decision notice was issued [on 22 April 2022]'. Be that as it may, with reference to GPDO Schedule 2, Part 3, paragraph W.(9), that information was requested of them, well before that date on 11 April 2022. Evidently, close to the 56 day period elapsing, the local planning authority were without definitive information on that point.
60. Arguably the absence of a precise floorspace figure is not, in itself, critical. Class R expressly relates to the 'change of a use of a building...'. The Council calculates the floorspace of the existing barn as 435sqm (which also, incidentally, differs from the floorspace approved here in 1996). The appellant also agrees that the floorspace of the barn is less than 500sqm. However there remains no definitive information before me on this point. The appellant's appeal statement also still refers to the intention to change '500sqm of the existing agricultural building to Class B8'.
61. That lack of clarity is problematic for three principal reasons. Firstly it introduces a degree of uncertainty in terms of the scale and intensity of the proposed use. Secondly the limitation in paragraph R.1.(b) prevents development where the cumulative floorspace of buildings which have changed used under Class R within an established agricultural unit exceeds 500 square metres. Without a fix on the floorspace here, determining whether any other development would transgress that limit in conjunction with the scheme before me would be challenging.
62. Thirdly, Class R permits the change of use of 'a building and any land within its curtilage.' For the purposes of Class R, curtilage means '(a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser.'
63. There is no curtilage shown on plan EX01. There is none annotated on plan No. 1205-DPA-002, Revision A. The latter appears to indicate that the appeal site encompasses a substantially larger area than the footprint of the building, including other buildings. There are no readily identifiable markers or features as to where any curtilage logically falls. Therefore, were I to allow the appeal, I

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<sup>17</sup> Section 55(2)(e) of the 1990 Act, noting that Schedule 2, Class 3, paragraph X of the GPDO specifies that where a building was not in agricultural use on 3rd July 2012, it must have been so for 10 years before the date the development begins.

would need to omit a floorspace reference, allow an unquantified amount thereof, and somehow deal with an uncertain extent and location of curtilage.

64. Even if it were possible to address those ambiguities, that would effectively render the scheme substantially different from that set out in the application.<sup>18</sup> Noting the correspondence history above, via paragraph W.(3) an application for prior approval may be refused where 'the developer has provided insufficient information...'. With that in mind, I cannot conclude that the scheme would be permitted development, or that I could legitimately ensure it fits within those confines. For completeness, I have nonetheless considered whether the proposal would accord with Class R paragraphs R.3.(1)(b)(i) and R.3.(1)(b)(ii).

*Transport, highways and noise impacts*

65. As noted in respect of appeal A, farming entails various vehicular movements. Vehicles will inevitably range from domestic-sized, to farm machinery, and likely also heavy goods vehicles for deliveries or transportation of goods. The appellant sets out that there are no restrictions on the agricultural use of the barn, whether in terms of association with the surrounding land or when it may be used. 'Restricted hours of operation' could be imposed via appropriately-worded condition were the proposal otherwise acceptable. I note that the appellant describes the site as an 'isolated location', which in itself conflicts with the appellant's arguments in respect of appeal A as regards accessibility. Nonetheless I accept that, if in storage use, it would by virtue of its location be less appealing as a 'distribution centre' and more so for less intensive storage. I also acknowledge that certain storage uses are inherently less intensive, or entail fewer vehicular movements, than others.
66. However those are all abstract arguments. The barn is one of a number of buildings associated with Bethwines Farm. Its intensity of use for agricultural purposes is therefore likely to be low, noting that it was originally constructed for the storage of straw. The cutting, collecting and storage of straw, or of other crops, entails relatively few vehicular movements. As reasoned in respect of appeal A, such movements are likely episodic. Moreover such vehicular movements are related to the land and yields. Agricultural land would likely yield the same regardless of the particular use to which this barn is put. Therefore, practically, a separate use here would inherently result in additional traffic.
67. It would be relatively unusual to 'sub-let' a barn to other farmers for storage as the appellant contends. Much of the costs in agriculture are associated with transport. I also note that, in order to benefit from agricultural permitted development rights, agricultural buildings must be 'reasonably necessary' for the purposes of agriculture within a given unit. Whilst beyond the built form of Fishbourne, nevertheless the A27 runs close by, a short distance beyond which is Chichester. I therefore do not agree that the 'isolated' location of the site would necessarily serve to significantly limit vehicular movements. A storage use of between 435 and 500 sqm, along with an associated curtilage, has the potential to generate a significant number of vehicular movements. Traffic is integral to such a use as opposed to secondary in respect of agriculture.

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<sup>18</sup> Noting the guidance in PPG Reference ID: 21a-012-20140306.

68. Whilst I accept Class R allows flexible commercial uses in principle, there is nonetheless no information before me as to the type of storage proposed and no quantification of the number or type of vehicles that the use proposed may be served by. As reasoned above, Bethwines Close is a small suburban cul-de-sac without parking restrictions where on-street parking may limit the carriageway width available to drivers. Again there is no substantive evidence before me in terms of existing traffic flows, design capacity of the highway network, in relation to visibility or suitability of junctions to accommodate the uplift that would result from the scheme.
69. To some extent my reasoning in respect of noise is interconnected with highways matters. Additional traffic will be a significant generator of noise. Traffic would necessarily need to pass relatively close to Nos 1 and 11 Bethwines Close (and also No 113 Blackboy Lane). In all likelihood storage will entail a greater number of comings and goings than agricultural use as reasoned above. Currently Nos 1 and 11 sit within the context of low density suburban development at the fringe of the village, with expansive countryside beyond. They therefore benefit from relative tranquillity.
70. Noise may also clearly arise from loading and unloading activities conducted within and around the barn, were it used for storage, associated with storing, sorting and retrieving items. There may also be noise associated with operating machinery within the barn, environmental systems and safety alarms dependent on how the use would operate. Whilst the brick building opposite may baffle some noise from within the barn and immediately around it, nevertheless the barn is of lightweight construction such that it would itself provide little attenuation to noises occurring within it.
71. The Council sets out that, at its closest, the barn is some 40 metres away from the nearest residential property. The land between the barn and properties at Bethwines Close is presently open and level, consistent with wider landscape character intervening features are limited. The site is also to the south-west of nearby properties such that sound is likely to be carried towards them given the prevailing wind direction. As in respect of highways there is no substantive evidence before me as to baseline noise conditions, the likely nature of noise associated with the scheme, or the effects thereof in terms of noise experienced by nearby residential receptors.
72. On the basis of the highly limited information before me, I cannot conclude that the impacts of the proposal in terms of transport, highways and noise would be acceptable. The proposal would therefore not demonstrably ensure the safe or efficient operation of the highway network or a high standard amenity in conflict with NPPF paragraph 111 and criterion f) of NPPF paragraph 130. Likewise the proposal would not accord with the relevant provisions of Local Plan policy 9 or FNP policy E1 which, in summary and amongst other things, seek to ensure respectively that development does not unacceptably add to congestion and that development should not unacceptably disturb the occupants of nearby residential properties.
73. I have reasoned in respect of the first main issue that the proposal would not be permitted development in the first instance on account of the irresolvable

ambiguities in the information. Even were the proposal permitted development, however, it has therefore neither been demonstrated that highways effects would be acceptable, nor that the living conditions of those nearby would be suitably safeguarded in conflict with Class R paragraphs R.3.(1)(b)(i) and R.3.(1)(b)(ii). I acknowledge that the scheme would entail various benefits, principally economic. However assessing a scheme against the relevant provisions of the GPDO is not an evaluation of any harm relative to any benefits within the terms of section 38(6) of the 2004 Act.

## **Appeal C, reasons**

### *Environmental context*

74. As noted in respect of appeal A, Bethwines Farm falls within the Chichester, Langstone and Portsmouth Harbours Eutrophic Nitrate Vulnerable Zone. It is also relatively close to an overlapping set of ecologically protected areas, the Chichester Harbour Site of Special Scientific Interest ('SSSI'), the Chichester and Langstone Harbours Ramsar Site and also Special Protection Area ('SPA') and the Solent Maritime Special Area of Conservation ('SAC'). Those areas are protected on account of the value of their habitats and the fauna they support.
75. The SPA and SAC were originally designated under the European Union Birds and Habitats Directives.<sup>19</sup> Along with Natura 2000 sites incorporating Ramsar sites, they now form part of the 'national site network' pursuant to the Conservation of Habitats and Species Regulations 2017 as amended (the '2017 Regulations'). The 2017 Regulations place a duty on me to undertake an appropriate assessment of the implications of any scheme where likely significant effects on the foregoing sites cannot be ruled out, a subject on which there has been extensive litigation. I am also required to take reasonable steps to conserve and enhance the natural features of SSSIs and, more broadly, to conserve biodiversity.<sup>20</sup>
76. In June 2020 Natural England, the appropriate nature conservation body under Regulation 63 of the 2017 Regulations, published technical guidance entitled 'Advice on Achieving Nutrient Neutrality for New Development in the Solent Region'. That preceded a February 2021 Natural England publication 'Condition review of Chichester Harbour sites: intertidal, subtidal and bird features', which identified that just over 3,000ha of the above sites was classified as in an 'unfavourable declining' condition on account of excess nutrients. The technical guidance recommended a 'nutrient' budget be established for development, and advocated 'nutrient neutrality' to forestall adverse environmental effects of new development.<sup>21</sup>
77. In that context the Council explain at appeal that 'the principle of 'nitrate offsetting' is acceptable and is being proposed elsewhere in the District (e.g. at East Dean) and in other authorities both locally and nationally.' The examples of such schemes before me involve the cessation of agricultural activities, as is proposed here. Nutrient offsetting schemes have, in turn, enabled the creation

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<sup>19</sup> 79/409/EEC, 92/43/EEC.

<sup>20</sup> Section 28(G) of the Wildlife and Countryside Act 1981, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

<sup>21</sup> Noting that Natural England's technical advice, including a nitrogen budget calculator, was updated in March 2022.

of a market for 'nutrient credits' (as reflected, amongst other things, in the Ministerial Statement of 20 July 2022).<sup>22</sup> Natural England's representation in respect of the scheme before me states that 'nutrient credit schemes within the Chichester Harbour catchment can provide a solution for small scale housing developments that may struggle to provide onsite nutrient offsetting mitigation.' It is that context in which the scheme is advanced.

### *Whether development*

78. The application form originally set out that the proposal was for 're-grading of existing agricultural land to create natural grass and wetlands to reduce nitrogen load at Chichester Harbour.' Dependent on their extent, some re-grading works may amount to engineering operations, a type of development defined in section 55(1) of the 1990 Act. That was the context in which planning permission was granted by the neighbouring South Downs National Park Authority for another nitrate offsetting scheme.<sup>23</sup>
79. As with the floorspace of the barn to which appeal B relates, there is some ambiguity in the appellant's statement of case as to the precise nature of the proposal. The appellant's correspondence of 13 April 2022 to the Council sets out that, although 'proactive interventions' in the land are not expressly proposed, the appellant is 'amenable' to them. However there are no groundworks illustrated on the supporting plans or detailed in the evidence before me. The appellant's 'Planning & Nitrates Statement' and 'Nitrate calculation housing development example' moreover both refer to the essence of the proposal as simply leaving 28.48ha fallow (in perpetuity).
80. The Council are of the view that leaving fields fallow would not constitute a material change of use in the land, with reference to section 55(1) of the 1990 Act, and therefore that planning permission is not required. The use of any land for the purposes of agriculture is not development by virtue of section 55(2)(e) of the 1990 Act, and the planning definition of agriculture in section 336(1) of the 1990 Act is broad and not exhaustive.<sup>24</sup> Many fields may also be left fallow for longer or shorter periods of time for various reasons (and their bringing back into agricultural use would not be development).
81. Nevertheless, for three reasons, I consider that the proposal before me would amount to a material change of use in the land. Firstly leaving land to grow wild in perpetuity is not an agricultural activity defined in section 336(1) of the 1990 Act. It is also not comparable to those activities. The essence of agriculture is to put the land to active use, crudely to derive or extract some sort of commodity from it. There is a parallel in that regard with livestock; where land is used to breed or keep livestock, or in some other way which contributes directly or indirectly to the human food chain, it may be said to be agriculture. That is as opposed to where animals are kept on land for another purpose, for example horses ridden recreationally.

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<sup>22</sup> HCWS258.

<sup>23</sup> Ref. SDNP/20/01263/FUL.

<sup>24</sup> It includes 'horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes...'.<sup>25</sup>

82. Secondly, an area given over to nitrate or nutrient offsetting serves a distinct purpose. Its function is to absorb, metabolise and therefore reduce the level of nutrients entering certain areas and ecosystems. In this instance the appellant indicates that the proposal would enable the removal of 834kg of nitrogen load annually. Nothing would be taken from the land. Reflecting on the context to this appeal set out above, the proposal is also fundamentally interconnected with housing provision elsewhere in a way that agriculture is not. The appellant's intention is that the proposal could render around 230 homes nitrate neutral by virtue of dealing with nutrients that would otherwise arise from associated effluent.<sup>25</sup>
83. Thirdly, the proposal seeks to expressly prevent the land being actively used, for agriculture or otherwise, in perpetuity. Via correspondence dated 29 September the appellant has submitted a draft unilateral undertaking relating to the site, pursuant to section 106 of the 1990 Act (the 'UU'). Conditional on planning permission being granted, the UU sets out the intention that the site would be subject to an agreed landscape and ecological management plan ('LEMP'). The LEMP would seek to ensure that the land is maintained for nitrate mitigation, and thereby that the proposal achieves its intended purpose.<sup>26</sup> The appellant also suggests that a similar end may be achievable via condition.
84. I will return to the relationship of the scheme to housing development, to the UU, and to potential conditions subsequently. However, in respect of the first main issue and summarising the foregoing, I conclude that the proposal would represent a material change of use in the land.

#### *Agricultural land*

85. As set out above, criterion 4 of Local Plan policy 48 sets out how it should be demonstrated that development of poorer quality agricultural land has been 'fully considered' in preference to the use of BMV. FNP policy E2 explains how Fishbourne has a good growing climate, that both agricultural and horticultural industries are both important locally and nationally. It therefore seeks to protect BMV, minimising its loss. Criterion b) of NPPF paragraph 174 recognises the various benefits of BMV.
86. The Council explains that, at a strategic level, they have supported nutrient offsetting schemes on sites which are not BMV. BMV is defined in the glossary to the NPPF. It includes that which is given an agricultural land classification ('ALC') of 1, 2 and 3a. The appellant refers to the scheme as a Suitable Alternative Natural Greenspace ('SANG'), albeit there is no indication that it would be maintained as publicly accessible (as commonly occurs elsewhere to minimise recreational pressure on environmentally sensitive sites).
87. Following my reasoning in respect of the first main issue in respect of appeal C, section 38(6) of the 2004 Act applies, namely that the proposal must be determined in line with the development plan unless material considerations

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<sup>25</sup> Albeit that a calculated example development of 209 houses is set out in the appellant's 'Nitrate calculation housing development example' document.

<sup>26</sup> Notwithstanding that provision is also therein made for obligations contained in the UU to be terminated if 'relevant events' occur, such as a change in the law or practice.

indicate otherwise. That is the basis on which the appellant's case at appeal is premised, and in respect of which the Council have made comments.

88. It is therefore critical to establish accurately the ALC of the site amounting to some 28.48ha comprising some five fields (recognising that may vary). The sole reference to the ALC of the site is within the appellant's statement of case. That states at paragraph 5.2 that the site is ALC 3B, i.e. not BMV: 'indicating a moderate yield based on a narrow range of crops. The land is not considered to be the 'best and most versatile' land available within Chichester...'. I note that establishing BMV is not constrained to that land which falls within a given local authority area as that statement may suggest.
89. That statement is, moreover, unsubstantiated. There is a long continuity of farming here, indications of a year's crop yield before me, and the FNP references the local significance of agriculture. At a high-level Natural England/ DEFRA mapping indicates that the site, or parts thereof, may be ALC grade 2, and therefore BMV.<sup>27</sup> Neither the appellant's Nitrate Assessment Statement, Hydrology (Geology) and Biodiversity Assessment, nor planning statement, present any substantive evidence on that point. There is no indication Natural England guidance in respect of assessing ALC has been followed, noting that recommends a field survey in the absence of insufficient pre-existing data.
90. Therefore I cannot conclude that the proposal would comply with criterion 4 of Local Plan policy 48, FNP policy E2 or that it would accord with the guidance in criterion b) of NPPF paragraph 174. The evidence on this point is inadequate, and such that there is points towards the site being BMV.

#### *Validation dispute*

91. The appellant's argument appears to be that, with reference to Natural England correspondence of 10 May 2022, the Council incorrectly took the view that planning permission was not needed.<sup>28</sup> However that is not the subject of the Council's correspondence to the appellant of 7 February 2022 explaining that, in their view, the application was incomplete. Nor is that the subject of the appellant's notice of 15 February 2022 under article 12 of the DMPO. Those exchanges focussed on the necessity of details requested by the council in respect of 'the track and hardstanding i.e. materials, more detailed close-up plan (metrically scaled)... existing and proposed cross sections of the site showing all ground works i.e. ponds and ditched (sic.)...'.
92. The onus falls principally on an applicant to substantiate their case. Under section 62(3) of the 1990 Act the local planning authority may require that an application for planning permission must include (a) such particulars as they think necessary (b) such evidence in support of anything in or relating to the application as they think necessary. Section 62(4A) qualifies those provisions. It specifies that such requirements must be, in summary, (a) reasonable having regard, in particular to the nature and scale of the proposed development, and (b) reasonable to think that the matter will be a material consideration.

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<sup>27</sup> Council statement of case, paragraph 4.12.

<sup>28</sup> Appellant statement of case, paragraph 1.3.

93. My reasoning in respect of the merits of appeal C makes the validation dispute somewhat academic. Nevertheless in my view the details requested by the council were necessary and reasonable within the terms of section 62(3) and section 62(4A) of the 1990 Act. The proposal was originally for development described on the application form as 're-grading of existing agricultural land...'. That suggests some active intervention in the landscape potentially amounting to engineering operations. The 're-grading' of land is referred to in the planning statement and remains referred to in the appellant's appeal statement also.
94. However no works are shown on associated plans or defined elsewhere. Plan No. 20.0018-1-A-EX02, the principal plan supporting the application, is furthermore at 1:1250 scale such that it illustrates very little in terms of existing site conditions or the nature of any tracks or hardstanding already present. Ambiguities remain at appeal. There are variously references in the information before me to 'proactive interventions', clearing ditches in the Hydrology (Geology) and Biodiversity Assessment, and to the LEMP in the UU. Accordingly I conclude that it was reasonable for the Council to have sought the further particulars referred to above, and therefore in the absence of such further evidence not to have validated the application.

#### *Other matters*

95. I accept that the scheme would be beneficial in terms of reducing nutrients entering nearby ecosystems, notwithstanding any recent revision to the calculation metric. I also acknowledge that offsetting schemes can provide a means of achieving 'nutrient neutrality' going forward, notwithstanding any legacy of the use of fertilizers as referenced in the appellant's Hydrology (Geology) and Biodiversity Assessment. There are indications that the scheme has been advanced as the counterpoint to developing HELAA site HFB0004a for 230 homes, although I note that a figure of 209 is given in the appellant's 'Nitrate calculation housing development example' document (with a much higher figure suggested in general terms in paragraph 5.08 of the appellant's Nitrate Assessment Statement).
96. However it is supposition that the site would naturally turn into grass and wetlands. Para 1.1 of the Geology assessment states that 'the farm before it was drained would have been part of the coastal planed (sic.) that connected to Chichester Harbour.' There is no evidence on that point, noting that the Fishbourne Roman site, a scheduled ancient monument, falls close by. In all likelihood the site, or parts of it, have been subject to human intervention for millennia. Noting the presence of wooded areas near the site, the natural tendency of almost any land in Britain is moreover to turn into secondary woodland.
97. Taking any land out of agricultural use, or managing agricultural practices differently, may theoretically reduce nutrients entering the local ecosystem. That may be beneficial whether or not there has been adequate delivery, or exists an adequate forward supply, of housing. However that does not provide compelling justification for this specific scheme. There is no clear indication of the types of farming activities or practices conducted over time here. There is no indication HELAA site HFB0004a is being progressed as an allocation. There is similarly no indication in the cases made to me that the Council are unable to demonstrate an adequate forward supply of land for housing, or that housing

delivery is faltering with reference to NPPF paragraphs 68, 74 or 11 (or, even if they were not able to, that any such lack is attributable to insufficient nutrient offsetting facilities). There is therefore no compelling justification for removing the land here from agricultural use to enable the delivery of housing. That reasoning would stand even were the land not BMV, noting that the NPPF encourages housing delivery but also the development and diversification of agricultural and other land-based rural businesses.

98. The UU before me is undated. I accept that stems from a dispute between the main parties as to its necessity and provisions. There is also some dispute in the evidence before me as to whether all individuals with an interest in the land are signatories to it. However even were there a correctly executed and binding UU before me, were it alternatively possible to achieve some similar end via a negatively-worded condition, or indeed were the proposal otherwise acceptable, the scheme would remain unacceptable for the foregoing reasons.

### **Conclusions**

99. Having taken account of the development plan as a whole along with all other relevant material considerations, I conclude that appeals A, B and C should be dismissed (and that planning permission or prior approval for the proposed schemes should be refused).

*Thomas Bristow*  
INSPECTOR