



Appeal Decision

Hearing Held on 5 & 6 July 2023

Site visit made on 6 July 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2023

Appeal Ref: APP/L3815/W/22/3300814

**Koolbergen, Kelly's Nursery and Bellfield Nursery, Bell Lane, Birdham,
Chichester PO20 7HY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Paul Knappett against the decision of Chichester District Council.
 - The application Ref BI/20/02066/OUT, dated 13 August 2020, was refused by notice dated 10 December 2021.
 - The development proposed is described as Outline Application with all matters reserved apart from access for the erection of up to 73 dwellings, open space and associated works, Class E(g) employment floorspace and Class E(a) retail floorspace.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was initially submitted for 77 dwellings and referred to use classes before Class E of the Town & Country Planning (Use Classes) (Amendment) (England) (Regulations) 2020 came into force. The description in the banner heading is from the decision notice, as agreed between the Council and the appellants during the determination of the application.
3. The application is made in outline with all matters reserved for future consideration except for access. It includes plans indicating the internal layout of the development including circulation routes for vehicles and pedestrians, which are described as being illustrative.
4. Having regard to the Town and Country Planning (Development Management Procedure) (England) Order 2015, in relation to reserved matters, there is an overlap between the definitions and coverage of 'access' and 'layout'. As there is no legislative requirement that all the matters within the definition of any of the reserved matters must be included in the outline application if they are not reserved, I have considered the appeal on the basis that it is only the accesses to and from the public highway that are before me for consideration. I have considered the internal layout as illustrative only.
5. A number of interested parties have raised the issue of groundwater and flood risk. Since the appeal was lodged, there has been changes to the Planning Practice Guidance (PPG) to provide guidance upon earlier changes to the

National Planning Policy Framework (2021) (the Framework) in respect of flood risk. This is reflected in my setting out of the main issues and reasoning below. I have allowed the Council and appellants the opportunity to comment on these matters in advance of and at the hearing, and taken the submissions into account in determining this appeal.

6. I received a signed dated Unilateral Undertaking (UU) from the appellants before the hearing that was replaced by one submitted after the hearing, and a draft section 106 agreement from the Council. I have taken them into account in determining this appeal.

Application for Costs

7. An application for costs was made by Mr and Mrs Knappett against Chichester District Council. This application is the subject of a separate Decision.

Main Issues

8. The main issues are:
 - whether or not the proposal accords with policies concerned with the location of new development and the protection of the countryside;
 - the effect of the proposal upon the local horticultural industry;
 - whether or not the proposal is compliant with policies for flood risk and could ensure suitable provision for and maintenance of drainage infrastructure;
 - whether or not the proposal is compliant with policies for the control of pollution;
 - whether or not the proposal would make adequate provision for affordable housing and local infrastructure; and,
 - the effect of the proposal upon Habitats sites.

Reasons

Location

9. To provide housing in locations close to services and facilities proportionate to the settlements in the district, Policy 2 of the Chichester Local Plan Key Policies 2014-2029 (2015) (the CLP) sets out a development strategy and settlement hierarchy. It identifies locations where sustainable development will be accommodated to support the role of defined settlements. The hierarchy sets out the sub-regional centre of Chichester, several settlement hubs and then in the third tier a number of service villages, including Birdham.
10. At service villages provision will be made for small scale housing (consistent with the indicative numbers in Policy 5 of the CLP), local community facilities to meet identified needs within the village and neighbouring communities, and small-scale employment proposals. However, the appeal proposal is not small-scale and as the proposal is outside the settlement boundary defined by Policy 13 of the Birdham Parish Neighbourhood Plan (2016) (the NP) it is in the countryside for the purposes of Policy 13 of the NP and Policy 2 of the CLP.
11. Policy 2 of the CLP states that in the countryside, development is restricted to that which requires a countryside location, or meets an essential local rural

need, or supports rural diversification in accordance with Policies 45 and 46 of the CLP. It was agreed by the Council and appellant that Policy 46 is not of relevance to this proposal. Policy 45 states that development will be permitted where it requires a countryside location and meets an essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. Policy 15 of the NP requires development is in accordance with Policy 45 of the CLP.

12. The proposal is not small-scale, and it is not advanced that the provision of 73 dwellings, business and retail premises, has a specific need to be in a countryside location. At the hearing, the appellants' representative stated the proposal should be viewed as serving wider district needs. Therefore, overall, it could not be deemed to meet an essential local rural need, and would conflict with Policy 45 of the CLP and Policy 15 of the NP, as a whole.
13. Policy 5 of the CLP indicatively allocates 50 dwellings for Birdham between 2012 – 2029. Policy 12 of the NP allocates 79 dwellings at sites with permission, for between 2014 – 2029, with no plans to allocate further sites unless they are within the settlement boundary. At the present time 64 dwellings are understood to have been provided. This proposal would provide considerably more homes than the numbers planned in the CLP and NP. Though as Policy 5 does not provide a ceiling, the parties agreed the proposal does not conflict with it. Nevertheless, it still conflicts with Policies 2 and 45 of the CLP and NP Policies 12 and 13.
14. In preparing for revisions to the NP, consideration was given to Birdham's future needs. While it was suggested it might provide up to 200 dwellings in a site assessment document¹ (the SA), this is not borne out in the figures in the Draft NP² (the DNP) or the Draft CLP³ (the DCLP) which do not allocate any further dwellings at Birdham, primarily due to constraints related to the A27. Now that access matters have been agreed by the Council, the appeal site might well have been the first or second most preferable site in the SA. However, both main parties were of the view that limited or little weight could be attached to the SA, and the DNP attracts no weight at this stage.
15. For the reasons set out above the proposal does not accord with planning policies concerned with the location of new development and the protection of the countryside. It conflicts with Policies 2 and 45 of the CLP and Policies 12, 13 and 15 of the NP, the relevant provisions of which are set out above.
16. The Council's first reason for refusal refers to paragraphs 11, 12 and 47 of the Framework, and Policy 1 of the CLP which sets out the presumption in favour of sustainable development in a similar manner to the Framework. Paragraph 47 sets out similar provisions to section 38(6) of the Act. My findings on Policy 1 and the aforementioned paragraphs of the Framework, are dependent upon my conclusions in respect of the development as a whole. I consider these later.

Horticultural industry

17. The area has good conditions for horticulture, it contributes significantly to the local economy and is valued in the NP area. Policy 23 of the NP gives support

¹ Paragraph 1.4 of Site Assessment Report Prepared to assist the preparation of the Birdham Neighbourhood Plan Review 2020 – 2035 (Ref. 20068/SAR02).

² Birdham Parish Neighbourhood Plan 2021 – 2039 Final Draft (2023).

³ The Chichester Local Plan 2021 – 2039 Proposed Submission (Regulation 19) (2023).

to the retention of all businesses related to tourism, marine, horticultural and agricultural industries against any proposals for redevelopment. Accordingly, it states that proposals must not have a significantly adverse impact on those businesses. The previous Inspector for a 2018 proposal⁴ found a conflict with this policy and the main parties do not dispute there is a conflict with its aims.

18. This proposal would result in the loss of the currently active horticultural business and premises of Bellfield Nursery. The appellants questioned the desire of the current operators to continue in the longer term. While the operators have expressed support for this appeal scheme, they have not expressed the sentiment, in writing, that the business would not continue were this appeal to fail, or suggested it is no longer viable. The buildings appeared in a reasonable condition and there is no substantive evidence demonstrating significant investment is necessary to the buildings, were they to be sold-on.
19. The Inspector for the previous appeal, was of the view the former Koolbergen Nursery site was so derelict and overgrown that to bring it back into horticultural use would require a considerable amount of investment⁵. From what I saw and the evidence before me, there is nothing to suggest that bringing it back into horticultural use is a realistic or viable prospect.
20. Kelly's Nurseries is understood to have ceased in 2014. The previous Inspector opined that although the horticultural business had ceased, the glasshouses and site appeared generally in good condition. On the face of it, at that time there was nothing to prevent a similar use being resumed, and no detailed evidence was produced to justify the site's loss because of the proposal.
21. The appellants expressed views that its size, lack of expansion space, and substantial costs and investment mean a horticultural use is not possible or viable. The costs of refurbishment are not detailed and there is no evidence the site has been marketed, or an occupier sought, demonstrating an absence of demand for it. While the structures might be of some age, most appeared in reasonable condition suggesting relatively limited work may be necessary. The sector is understood to have performed well in recent years and I heard examples of small enterprises that had significant increases in profitability.
22. The employment capacity that would be lost would be exceeded by the new employment and retail buildings. However, Policy 23 aims to protect specific businesses including horticulture, and the new facilities are not specifically related to those types of industry. The appeal development would be likely to result in the loss of one existing business and a second premises suitable for local businesses that Policy 23 seeks to protect and support. Given the size of the premises and business opportunities to be lost in the context of the NP area, the effect would be a significantly adverse one.
23. I understand that other horticultural sites have been lost to housing, but I am informed the proportion of use was less than for the appeal site. I do not agree with the appellants that it is certain Policy 23 will fall following reviews of the NP and CLP due to the need to deliver housing. The policy was adopted to reflect local priorities and values in the NP area, having seen the loss of premises to housing and following modifications by the NP examining Inspector. The DNP seeks to retain Policy 23 substantially unchanged. While

⁴ APP/L3815/W/17/3182355.

at the current stage of preparation the main parties put it to me the DNP attracts no weight, I see no intention Policy 23 is to be removed, or likely to be so and does not align with the objectives of the DCLP or the Framework.

24. For the reasons set out above, the proposed development would have a significantly adverse effect on local horticultural business and the local horticultural industry, in conflict with Policy 23 of the NP, the relevant provisions of which I have set out above.

Flood Risk and drainage

25. Paragraph 7-001-20220825 of the PPG states areas at risk of flooding can be from any source, now or in the future, including rising groundwater and drainage. The appeal site has a high-risk flood hazard classification for groundwater, identified in the Council's Strategic Flood Risk Assessment (SFRA). Neither main party disputed this. The risk is identified by the modelled levels that might be expected after a winter recharge season, being between 2.5cm to 0.5m below ground surface level. This indicates where groundwater is likely to emerge but does not show where flooding is likely or at what depth.
26. Paragraph 167 of the Framework states that where appropriate, applications should be supported by a site-specific flood-risk assessment (FRA), with reference to footnote 55. Footnote 55 includes all proposals involving sites of 1 hectare or more, land identified in an SFRA as being at increased flood risk, and land that may be subject to other sources of flooding where its development would introduce a more vulnerable use. Although a site only needs to meet one such threshold, it appears to meet those three listed.
27. The objectives of an FRA include: to establish and demonstrate whether a development is likely to be affected by current or future flooding, that the measures proposed to deal with any effects or risks are appropriate, and if necessary, the evidence to apply the Sequential Test (ST), and whether the development will be safe to pass the Exception Test (ET) (PPG Reference ID: 7-020-20220825).
28. No FRA is provided. I am provided with a drainage statement⁶, and consultation responses expressing no objection from the Lead Local Flood Authority (LLFA), Southern Water (SW), and the Coastal and Drainage Engineer (CDE). The responses suggest various conditions including pre-commencement conditions, to which the appellants do not object. The appellants believe I have sufficient evidence to conclude an FRA is not necessary, an acceptable solution could be found, and conditions would address matters outstanding. However, the consultation responses pre-date the changes to the PPG.
29. An outline planning permission establishes the development is acceptable. Yet I have no monitoring data to explain groundwater levels across the site, and the level of risk from flooding to people or property, now or in the future. As the groundwater levels are not well understood, there is no evidence as to whether the removal of existing hardstandings would encounter water, the finished ground level needed, the capacity that could be built into SUDS, and if this could meet a 1 in 100 year plus 40% climate change event.

⁶ Statement of Drainage Requirements by R L Stubbs (June 2020).

30. Existing and future run-off are not quantified, so it is not clear how much surface water should and would be catered for by existing and new infrastructure. The appellants suggest the appeal site is not hydrologically connected to the surroundings and the proposal would result in a reduced run-off area and an overall drainage betterment, given the Bellfield site comprises approximately 85% hardstanding, the Kelly's site approximately 75-80% and Koolbergen approximately 90%.
31. However, from what I saw at Bellfield there is a large gravel car park, but its infiltration properties are not clear. The Koolbergen site included sizeable areas of unmade ground and vegetation. As it has been abandoned for a long time, there are large areas of ruderal vegetation and scrub, some underlain by broken ground and/or soil, suggesting significant areas that are not entirely impermeable. There is no groundwater monitoring or percolation testing that demonstrate the appellants' assertions are correct, that an acceptable solution could be found, and adequate SUDS infrastructure can be provided.
32. There is a reliance upon perimeter ditches to provide SUDS capacity. An interested party advised a ditch and a neighbouring field floods. The northern ditch provides drainage under a permission for housing adjoining the appeal site. The implications of this upon its capacity are not before me. It is also disputed it is within the ownership or control of the appellants, which adds to my concerns.
33. I am provided with details of other proposals⁷ in the same groundwater hazard classification. All pre-date the update to the PPG, and were accompanied by FRAs. In considering its defence of an appeal against non-determination for a proposal at Main Road⁸, the Council highlighted the LLFA recommended refusal on the basis that the FRA has not demonstrated that site can be drained in a sustainable manner. However, it is understood the proposal considers the potential need for ground raising, the technical evidence includes groundwater monitoring data and a Groundwater FRA, suggesting a negligible risk of groundwater flooding. This suggests that proposal may include sufficient technical evidence to address groundwater flood risk.
34. I am told that wider surface water drainage improvements have occurred through the Medmerry Realignment scheme so water can flow from the site without increasing the risk of flooding in the wider area. The Council has previously accepted that in certain circumstances it is not necessary for a full 3m wide ditch maintenance channel to be provided to ensure compliance with the Land Drainage Act 1991. However, at the hearing they did not agree this is the case for the appeal site, given an absence of information in this regard.
35. Notwithstanding the absence of detail on the plans, were I take the view the appellants have riparian ownership rights, the scope for approving the layout at the reserved matters stage suggests it is possible that adequate maintenance space could be made within the site while maintaining a policy compliant mix of dwellings. However, this would not mitigate or overcome the concerns I have in respect of other aspects of flood risk set out above. In-light of these concerns, while a reduced number of dwellings might be possible under any

⁷ Refs 17/00316/FUL; 20/02491/OUT; 20/03125/OUT.

⁸ Paragraphs 6.29 and 6.30 of Planning Committee Report dated 14 June 2023 for Planning appeal APP/L3815/W/23/3319434 Land off Main Road, Birdham PO20 7DR (LPA ref. BI/21/01830/OUT)

- outline consent, it is not demonstrated a reduced scheme would not increase the risk of flooding to people and property.
36. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk, whether existing or in the future. Paragraphs 161 and 162 require the application of the ST to avoid, where possible, flood risk to people and property. Its aim is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding. If it is not possible for a development to be in areas with a lower risk the ET may have to be applied (paragraph 163).
37. The ST is designed to avoid, so far as possible, development in current and future medium and high flood risk areas (PPG Ref. 7-023-20220825). This is because avoiding flood risk through the ST is the most effective way of addressing it. No ST has been submitted. The Council and the appellant indicated that given the extent of land at high-risk from groundwater within the Parish area, were the ST to be applied there would be no more suitable areas at a lower risk of flooding in the area having regard to the SFRA. However, as the proposal could be viewed as serving wider district needs, I have some reservations about this approach. Moreover, a verbal indication of agreement does not amount to a robust ST. I would expect an ST to have been provided to robustly justify the correct approach to the appeal proposal.
38. The need for the ET will depend on the vulnerability of the site and the development (Framework paragraph 163). This proposal would include several dwellings which are classified as 'more vulnerable', retail and employment buildings classed as 'less vulnerable' and amenity open space classed as 'water-compatible'. Therefore, were I to have been able to agree the approach to the ST indicated by both main parties, the ET would need to be satisfied.
39. It must be demonstrated a development would provide wider sustainability benefits to the community that outweigh the flood risk; and, the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall (Framework paragraphs 164 – 165). The absence of groundwater monitoring and evidence that should be provided in an FRA, means it is not demonstrated the development would provide wider sustainability benefits to the community that outweigh the level flood risk. Neither is it demonstrated the development would be safe for its lifetime taking account of the vulnerability of its users, or that flood risk will not be increased elsewhere. Therefore, the ET is not passed.
40. Therefore, for the reasons set out, the proposal is not compliant with policies in respect of flood risk, and suitable provision for and maintenance of drainage infrastructure is not demonstrated. It would conflict with Policies 33 and 42 of the CLP which, in combination and amongst other things states development will only be permitted where the ET (where required) is passed, a site-specific FRA demonstrates that the development will be safe, with specific requirements including protection, resilience and resistance measures included, and adequate infrastructure can be provided. It also conflicts with paragraphs 159, 162 – 165 and 167 of the Framework, the relevant provisions of which are set out above.

Pollution

41. Paragraph 188 of the Framework states the focus of planning decisions should be on whether a proposed development is an acceptable use of land, rather than the control of processes or emissions where subject to separate pollution control regimes. Planning decisions should assume that these regimes will operate effectively. As the statutory undertaker SW is obliged by the Water Industry Act 1991 (the WIA) to accept flows and provide the necessary capacity to drain property, and charges are paid to provide any upgrades to serve new development. Should SW fail to meet their obligations, the industry regulator, OFWAT is obliged to take appropriate action and ensure necessary work is carried out.
42. The proposed development would connect to the mains sewer system via a new on-site wet well and pumping station. Sewage would be pumped into the existing system via the Pinks Lane Pumping Station (PLPS), from where it will be directed to the Sidlesham Wastewater Treatment Works (STW) where I am informed there is sufficient capacity to accept the additional foul flows.
43. I am informed there have been no sewer flooding incidents on the appeal site itself, although sewage flooding or blockage incidents have occurred at properties in the wider area over recent years. From what I heard it is not clear why the Council is not contesting the Main Road⁹ scheme on the same grounds as this proposal, despite it being within the same catchment.
44. SW advise incidents have been caused by infiltration of pipes by water, often during times of significant precipitation. This can result the system capacity being exceeded and the need to tanker wastewater directly to STW. SW has indicated there may need to be some reinforcement to avoid an increased risk of the sewer system being overwhelmed. Work is on-going to identify the points at which infiltration occurs and to rectify this through the New Infrastructure Charge and SW's capital works programme. It advises the occupation of dwellings should be phased to align with the delivery of any reinforcement. The area is one of the first round of 61 catchments that SW will assess for investment for 2025-30¹⁰.
45. There is space to ensure site infrastructure could be designed to provide significantly in excess of 24-hours capacity, with further capacity through dosing, secured by planning condition. Another condition requiring a construction phasing plan with the first reserved matters application would allow some dwellings to be constructed and occupied while any necessary network reinforcements are undertaken. On this basis the development is unlikely to be prevented from commencing within 4 years to comply with the Interim Position Statement for Housing (2020) (IPS), and it seems unlikely there would be any delay to its build-out.
46. While I understand the strongly held views of residents in this regard, I conclude that sewage from the development could be adequately dealt with, would not increase pollution incidents, and in accordance with the principles set out in paragraph 188 of the Framework I see no reason it will not be effectively regulated.

⁹ APP/L3815/W/23/3319434.

¹⁰ Para 6.17 of the Council's Statement of Case.

47. For the above reasons, subject to the imposition of suitably worded planning conditions, the proposed development would be compliant with policies for the control of pollution. It would not conflict with Policies 174e) and 185 of the Framework which seek to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution and health effects.

Infrastructure

48. The appellants' signed and dated UUs seek to address the Council's reason for refusal No 5. Due to specific legislative requirements under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations), I address those requirements separately.
49. I sought the Council's views upon the revised UU upon which I base my assessment. I have also considered it with regard to the statutory requirements in Regulation 122 of the CIL Regulations and the policy tests in paragraph 56 of the Framework. The Deed includes 'blue pencil' type clauses¹¹ if I do not consider a particular obligation would be justified in these terms.
50. *Affordable housing* – The appellants' UU seeks to provide for 21 units (7 shared ownership, 14 affordable rented) of a specified mix of sizes agreeable to the Council and a commuted sum for the 0.6 of a dwelling. The UU does not contain a provision for a strategy tenure plan for the distribution of affordable housing within the development. However, both main parties agreed this could be addressed by amended wording to a planning condition.
51. There is no nomination agreement appended to the UU which the Council considers is CIL necessary to demonstrate local connections to Birdham before the housing is considered for those in the wider area. While the Council is not a party to the UU, the clauses within the UU appear to make adequate provision for Council nominations. Moreover, the evidence before me suggests such nominations as the Council have sought for the Parish are only required for exception sites¹², and neither party has stated this is an exception site. Therefore, I consider the Council has not demonstrated, why the UU is not sufficient to meet Policy 34 of the CLP, and the relevant provisions of the Planning Obligations & Affordable Housing Supplementary Planning Document (2016) (the SPD) for this type of development.
52. *A27 Mitigation* – The A27 is operating over capacity at several locations. It is unavoidable that future occupiers would use A27 to access settlements north of it for services and facilities, so there would be effects upon the A27 directly attributable to the proposal. National Highways (NH) in its response to the application¹³ has confirmed that at that time it raised no objection subject to a contribution applying the SPD formula. The UU seeks to secure the payment of £233,856 for works to the A27 in accordance with the SPD formula.
53. The Council informs me that due to rising costs the improvements to be funded by the SPD formula are not likely to be deliverable. A study¹⁴ (the CTS) to inform (amongst others) Policy T1 of the DCLP identifies a new package of measures that it states are the minimum necessary to increase capacity,

¹¹ Page 12, Clauses 12 and 14.

¹² Paras 4.38 – 4.42 of the SPD.

¹³ Dated 18 June 2021.

¹⁴ Chichester Transport Study – Local Plan Review Transport Assessment (January 2023).

- reduce congestion and improve safety on the A27. It sets out the level of contributions based upon mitigating the effects of 3,351 new dwellings over the DCLP period. Applying this formula, the proposal should provide £556,416.
54. The appellants believe the increased amount does not meet the CIL tests for a planning obligation, it conflicts with government guidance on securing such infrastructure, and it should be sought through CIL. However, Regulation 123 of the CIL Amendment Regulations 2019 mean that infrastructure from an authority's infrastructure list can be funded from pooled contributions from multiple section 106 obligations.
55. The CTS apportions percentages of trip growth to new development within the Council area which would be expected to contribute to scheme mitigation. However, the CTS is not part of the development plan, it is not an adopted SPD, and Policy T1 is yet to be found sound. I am informed NH has been part of the CTS and DCLP process. However, while it appears they have discussed and agreed to many aspects of the CTS, it is not clear from it that NH has agreed to the new costings. Rather the CTS appears to suggest improvement works are based upon an assessment by the authors of previous NH costings. Despite the opportunity to respond to this appeal, NH has not done so, or sought an increased contribution in-line with the Council's expectations.
56. Therefore, in the absence of clear confirmation from NH of agreement that the new costings are necessary, I cannot be certain the level sought by the Council is necessary. While I am informed by the Council that NH do not collect the funding, the Council are not the statutory body for the A27. Therefore, in the absence of NH confirmation to the contrary, it appears appropriate the payment should be made to NH.
57. I am of the view it would be necessary and appropriate to provide a contribution to the A27, and for the above reasons, based upon the specific evidence before me, I do not find the appellants' UU in conflict with Policies 8 and 33 of the CLP. These expect infrastructure including transport mitigation measures to mitigate the impact of development upon junctions of the A27 will be secured by development proposals, as reflected in the adopted SPD.
58. *Local Highway Works* – In combination, Policies 9 and 39 of the CLP require that development provides or funds the new infrastructure, facilities and services required by residents, including access and transport requirements necessary to make development safe and accessible by sustainable modes of transport. The UU seeks to secure Stage 2 and 3 Safety Audits, a highway works scheme for approval and a commuted sum for bus stops.
59. The works include highway accesses, street lighting and a shared pedestrian cycle link along the west side of Bell Lane to the B1279/A286 junction. These are necessary to make the development compliant with Policies 9, 33 and 39 of the CLP, but would also have some wider sustainability benefits. The obligations are justified and meet the CIL and Framework tests.
60. *Open Space* – Policies 33 and 54 of the CLP state that new residential development will be required to provide adequate infrastructure including open space, recreation facilities, and provision for its future maintenance. The UU would deliver the public open space and its maintenance. There is no dispute it complies with relevant standards. It shall be laid out and installed prior to the occupation of the 33rd open market dwelling and transferred to a management

company. This is necessary to make the scheme acceptable, but it would also provide some benefits through its use by wider residents.

61. *Retail and employment units* – The UU undertakes to deliver the retail and employment units which are necessary to make the development acceptable. Although it includes some definitions, the UU does not contain obligations to secure marketing strategies sought by the Council. The Council deems this meets the CIL tests because it would ensure they are marketed in a manner compliant with Policy 26 of the CLP.
62. The Council's economic adviser is of the view that there is reasonable demand for these business units, and it is in the appellants' interest to ensure they are occupied. Were they not to be occupied, their loss would need express permission, which would include consideration of whether the loss is justified having regard to Policy 26 of the CLP. Therefore, I do not find provisions for marketing strategies necessary.
63. *Monitoring fee* – The obligation has several trigger points and actions the County and District Council need to undertake and/or monitor. It is therefore reasonable that an index-linked monitoring fee is paid to the Council of £5,106 prior to commencement and a monitoring fee of £1,440 paid to the County Council prior to the submission of the reserved matters application, to ensure the smooth operation of the planning obligation.
64. For the reasons given above, I am satisfied the obligations in the UU are necessary and proportionate and meet the requirements of Regulation 122 in the CIL Regulations and the Framework, therefore I can take them into account.

Habitats sites

65. The Regulations require that where a plan or project is likely to result in a significant effect on a European site (habitats site), a competent authority is required to make an Appropriate Assessment (AA) of the implications of that plan or project on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
66. The appeal site is within a 5.6km zone of influence (ZoI) of the Chichester and Langstone Harbours Special Protection Area and Ramsar site (the SPA). The SPA comprises two large estuarine basins with extensive intertidal mudflats and sandflats with areas of seagrass beds, saltmarsh, shallow waters, lagoons, grazing marsh and shingle ridges and islands. These habitats are designated due to their importance to a range of over-wintering and breeding waterfowl and waders, and waterbird assemblage, which are the qualifying features.
67. The SPA conservation objectives are to maintain or restore its integrity by maintaining or restoring the extent, distribution, structure and function of the habitats of the qualifying features, and supporting processes upon which they rely. They are also to maintain and restore the population of the qualifying features, and the distribution of the qualifying features within the site.
68. Research has found that a range of outdoor activities result in disturbance of birds such as walking, jogging, cycling, and dog walking. New housing within the 5.6km ZoI will result in increased coastal visits with a likely disturbance of

birds, unless mitigation measures are put in place. Therefore, following the precautionary principle, the proposal alone and in combination with other plans and projects would have LSEs on the SPA.

69. The Solent Recreation Mitigation Strategy (2017) (the SRMS) sets out measures to mitigate the effects of new development delivered through a partnership project. These include a team of rangers, marketing, educational initiatives, encouraging responsible behaviours and conduct, permits for certain activities, site specific access management projects and on-going monitoring. It is funded by a per-dwelling tariff secured by means of a planning obligation.
70. The appellants do not dispute the need to provide a per dwelling tariff in accordance with the SRMS and the UU makes provision for contributions. Natural England (NE) raises no objection on this basis. The UU proposes the payment of obligations in one instalment. I am satisfied mitigation would be delivered in time and would be directed in the manner intended. Therefore, although payments do not bind the Council, based on the specific evidence before me it is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the SRMS. I am therefore satisfied the mitigation would be secured and be delivered in a timely manner.
71. For the reasons set out above the proposed development would not conflict with the Habitats Regulations and Policies 9 and 50 of the CLP. In combination, these state that development will not be permitted unless adequate mitigation measures and infrastructure are secured to ensure there would be no adverse effect upon the integrity of the SPA. It would also not conflict with paragraph 180 of the Framework which states that if significant harm to biodiversity cannot be avoided or adequately mitigated, then permission should be refused.

Other Matters

72. In November 2020 the Council published the IPS. It seeks to provide a framework for the consideration of housing applications in the absence of an up-to-date development plan and 5-year HLS. It seeks to adopt a proactive approach to boosting supply and to assess housing proposals in a consistent manner in advance of a new local plan being adopted.
73. I note the views of various Inspectors¹⁵ in decision letters provided, with reference to the weight attributed to the IPS, in the circumstances of and evidence in respect of those particular cases. Although some Inspectors have given it significant weight, it does not form part of the development plan, it is not an adopted SPD and cannot be treated as if it has the same status. One more recent decision attributed it limited weight based upon a legal opinion submitted in evidence, which the Council has not challenged.
74. The IPS is generally consistent with the aims of CLP and Framework policies. Although it seeks sites in the countryside are contiguous with an identified settlement boundary, this proposal is compliant. It also requires proposals demonstrate they are deliverable through the submission of a delivery statement justifying how quicker delivery is ensured. The Council was concerned that due to issues surrounding sewerage infrastructure, the development might not be able to meet this. However, I am satisfied it could

¹⁵ APP/L3815/W/20/3255383; APP/L3815/W/21/3274502; APP/L3815/W/21/3286315;

be commenced within 4 years and both main parties agreed conditions with timescales that would reflect the Council's objective of quicker delivery.

75. Given my findings above in respect of the some of the reasons the Council objected to the proposal and its general conformity with national and CLP policies, the IPS adds little to my assessment. That said, based upon the submissions before me, for the reasons set out, I attribute the IPS limited weight as a material consideration.

Planning Balance

76. Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration.
77. The Council does not have a demonstrable 5-year housing land supply (HLS). Therefore, the policies most important for determining the proposal are deemed out of date¹⁶. Paragraph 11 of the Framework states that in such circumstances, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, having regard to footnote 7. This includes areas at risk of flooding. Therefore, the tilted balance does not apply.
78. The proposal would result in a significant temporary economic benefit during construction. There are understood to be 2 FTE and 2 seasonal workers at the active nursery and there are two other small business units currently although the number of workers is not clear. The new employment premises floorspace might typically accommodate 15 FTE with more at the retail premises. Once complete, as a consequence of matters such as spend by residents in the local economy, support to local services and facilities, the provision of employment and retail premises, revenue generation, local taxation and CIL contributions, there would be significant benefits to the local area.
79. Before the hearing the appellants' view was the Council could demonstrate a HLS of 4.01 years. The Council's 5-year HLS statement¹⁷ considers it has an HLS of 4.72 years. Both parties refer to appeal decisions from previous Inspectors considering this matter¹⁸. In the range set out by the main parties, on either measure, the delivery of housing as proposed carries significant weight. This is elevated if I take the view, on a precautionary basis, that the appellants' position is correct.
80. The replacement of some existing small-scale employment buildings with new employment and retail premises, and up to 73 new dwellings of which 30% would be affordable dwellings, in an area constrained by the AONB and where there is a worsening of affordability ratios, need and deficit in supply, are important matters in favour of the scheme. The provision of a new equipped and maintained space would attract weight in favour of the scheme. Subject to the imposition of suitably worded planning conditions, in the longer-term, the proposal would be able to provide for a net biodiversity gain across the site.

¹⁶ Footnote 8 of the Framework.

¹⁷ 5YHLS Statement by Lambert Smith Hampton (April 2023).

¹⁸ APP/L3815/W/21/3270721; APP/L3815/W/21/3286315; APP/L3815/W/20/3255383; APP/L3815/W/21/3284653; APP/L3815/W/22/3291594; APP/L3815/W/22/3296444.

Based upon the evidence before me and the indicative nature of the proposals, the biodiversity net gain attracts limited weight.

81. There appeared to be few dwellings immediately south of the appeal site and the pedestrian and cycle links with the wider area are not before me. However, the highway works scheme such as the provision of new bus stops, street lighting and a significant length of shared foot and cycleway would have benefits for existing residents as well as encouraging use of sustainable transport modes. This attracts moderate weight in favour of the scheme. Overall, the benefits of the development are of a high order.
82. There is no dispute expressed between the Council and appellants the proposal could be landscaped and laid out through the reserved matters submissions to ensure it would preserve the setting of listed buildings and the Somerly Conservation Area, the landscape and scenic beauty of the Chichester Harbour Area of Outstanding Natural Beauty, and the character and appearance of the area. These would be neutral matters. Were I to agree the proposal is or could be made compliant with policies such as those in respect of education and health infrastructure, and air quality, these would be neutral matters.
83. I have found that subject to the imposition of suitably worded planning conditions and the UU, the proposal is or could be made compliant with policies for access standards, the provision of sewage infrastructure, the A27 and habitats sites. There is no dispute expressed between the Council and appellant the proposal could secure compliance with policies such as design and layout, landscape management, arboricultural protection, protected species, renewable energy and resource efficient construction, distribution of house types, parking standards, the accessibility of services and facilities, archaeology, the living conditions of future and neighbouring occupiers, and highway safety. Based upon the evidence before me, these would all be neutral matters in the balance.
84. The proposed development conflicts with planning policies for the location of new development and the protection of the countryside. In this regard it would conflict with Policies 2 and 45 of the CLP and Policies 12, 13 and 15 of the NP. The policies reflect Framework objectives to direct development towards settlements and promote sustainable patterns of development. They do not preclude development in the countryside entirely but seek to limit it to certain types, which are not inconsistent with maintaining or enhancing the vitality of rural communities. However, they are based upon significantly out of date housing figures, and it is possible new dwellings will need to be provided in the countryside in the future. For these reasons, the conflict with those policies is attributed limited weight.
85. The proposal conflicts with a policy for the protection of certain types of businesses. Based upon the evidence before me, it is not likely Policy 23 of the NP would be deleted from any future NP and it is consistent with Framework objectives for maintaining or enhancing the vitality of rural communities and supporting a prosperous rural economy. The conflict with it attracts full weight, and I attribute the harm moderate weight overall. The proposal is deficient in respect of technical flood risk evidence. It conflicts with policies of the development plan and the Framework in respect of flood risk and drainage.
86. Overall, the magnitude of the harm and the degree of policy conflicts are such that overall, these outweigh the benefits. In-light of my findings the proposal

is also in conflict with Policy 1 of the CLP and paragraphs 11, 12 and 47 of the Framework, the relevant provisions of which I set out earlier.

Conclusion

87. For the reasons set out above, the proposal is contrary to the development plan taken as a whole. There are no material considerations advanced including the policies of the Framework that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR

APPEARENCES

FOR THE APPELLANTS:

Mr Richard Stubbs (Planning Consultant);

Mr Paul Knappett (Appellants).

FOR THE COUNCIL:

Jeremy Bushell BA(Hons) DipTp MRTPI (Principal Planning Officer, Chichester District Council);

Karen Rollings (Economic Development Officer, Chichester District Council);

Laura Archer BA(Hons) MSc MRTPI (Senior Planner, Chichester District Council);

Stephen Hemming MRTPI (Director – Planning Consultancy, Lambert Hampton Smith).

INTERESTED PARTIES:

Mr Pieter Montyn (Division County Councillor);

Mr D O’Sullivan (Local Resident).

SUBMITTED DOCUMENTS:

BL-1: Correspondence between Dominic Henly and Jane Thatcher (5 October 2021 – 13 October 2021) and consultation response to application Ref. 20/03034/OUT; and,

BL-2: Written Statement by Paul Knappett in respect of A27 contribution and National Highways consultation response to application Ref. BI/23/00067/FUL.