



Appeal Decision

Hearing held on 25 July 2023

Site visit made on 24 July 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/L3815/W/21/3280933

Land at Flat Farm, Broad Road, Hambrook, West Sussex, PO18 8SH

- 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 outline planning permission.
 - The appeal is made by PNH Properties Ltd against Chichester District Council.
 - The application Ref 20/03378/OUT, is dated 21 December 2020.
 - The development proposed is described as the erection of 30 dwellings comprising 21 market and 9 affordable homes, access and associated works including the provision of swales.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 30 dwellings comprising 21 market and 9 affordable homes, access and associated works including the provision of swales, at Land at Flat Farm, Broad Road, Hambrook, West Sussex, PO18 8SH, in accordance with the terms of the application Ref 20/03378/OUT, dated 21 December 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application was made in outline with all matters reserved except access. Whilst I have therefore treated the submitted plans as indicative, the layout shown has been used to inform the scheme's nutrient budget, and a submitted Unilateral Undertaking (UU) secures part of the site as open space. The plans therefore provide a reasonable indication of the layout likely to be submitted at reserved matters stage.
3. Immediately prior to the Hearing the appellant proposed a change to the description of development, removing specific details other than the number of dwellings. At the Hearing the Council agreed in principle, though both it and interested parties objected to the resulting potential for the split between market and affordable housing to be altered. This was indeed the underlying reason for the proposed change.
4. Regardless of the particular merits of any given split between market and affordable housing, and notwithstanding the fact that outline proposals can be simply described, it remains the case that the application was made and appealed on the basis of a specific number and mix of dwellings. Moreover, the appellant's proposed change was not subject of any broader public consideration within the context of the appeal itself. I have not therefore modified the description within the banner heading or within my decision above.

5. The Council failed to determine the application within the required timeframe. I have however had regard to the Council's submissions in defining the main issues below, noting that the matters in dispute have been subject of change over time.

Main Issue

6. The main issue is whether contributions towards mitigating the effect of additional trips on the operation of the A27 should be calculated with reference to adopted or emerging policy.

Reasons

7. The development would result in increased use of the local highways, including the A27, which suffers from congestion.
8. Policy 9 of the Chichester Local Plan: Key Policies 2014-2029 (the Local Plan) sets out the requirement for impacts on existing infrastructure to be mitigated, whilst Policy 8 sets out the specific measures, including a coordinated package of junction improvements to the A27. This is expanded upon within the Planning Obligations and Affordable Housing Supplementary Planning Document 2016 (the SPD) which sets out the funding formula. The appellant raises no objection to paying the contribution, and this is secured by the UU.
9. The Council wishes to replace the existing scheme with another which is set out within draft Policy T1 of the draft Local Plan. This lists a revised scheme of improvements, some of which are currently identified in the SPD. The emerging Local Plan has yet to be examined, and unresolved objections have been raised in relation to draft Policy T1 itself. As at this stage there is no certainty that draft Policy T1 will be adopted in its current form, it attracts limited weight, and the Council accepts this.
10. The Council has however sought to draw attention to the evidence base for draft Policy T1, and specifically the Chichester Transport Study: Local Plan Review Transport Assessment 2023. This, it asserts, justifies a level of contribution in line with that set out in draft Policy T1. It furthermore suggests that the deliverability of the draft Local Plan would itself be jeopardised in the absence of these contributions. This is again notwithstanding the fact that the draft Local Plan may not ultimately be adopted in its current form.
11. Whether any more than an upper end estimate of the likely costs of improvements identified in draft Policy T1 will ever be provided is unclear. However, the fact that project design and costing work has yet to be finalised accentuates the above uncertainty.
12. The Planning Practice Guidance (the PPG) makes clear that policies for planning obligations should be set out in plans and examined in public. It additionally states that it is not appropriate for plan-makers to set out new formulaic approaches to planning obligations in supplementary planning documents or supporting evidence base documents, as these would not be subject to examination. The approach advocated by the Council therefore directly conflicts with that set out in the PPG.
13. The existing formulaic approach for funding the A27 is itself set out within a supplementary planning document. However, insofar as the PPG refers to 'new'

formulaic approaches, the SPD pre-dates the 2019 revision of the PPG which saw this text introduced.

14. Paragraph 110 of the National Planning Policy Framework (the Framework) states that decisions should ensure that significant impacts from a development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. In this regard, the cumulative effect of increased trips on the A27 to which the development would give rise, would be mitigated to an acceptable degree by a policy compliant contribution. I am therefore satisfied that the obligation securing a contribution in line with Policy 9 and the SPD passes the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), and paragraph 57 of the Framework (collectively 'the tests').
15. The UU has been drafted to also secure a contribution in line with draft Policy T1. Given my findings above, the obligation securing this contribution does not pass the tests and cannot be taken into account.
16. For the reasons outlined above I conclude that a contribution towards mitigating the effect of additional trips on the operation of the A27 should be calculated with reference to adopted policy, and that the development would thus be compliant.

Other matters

Protected species

17. Common Lizards have been identified on site, and mitigation measures recommended. These can be secured through the imposition of a condition.

Habitats sites

18. The site lies close to and within the catchment of the Solent, which is covered by multiple habitats sites designations. Those directly relevant are the Chichester and Langstone Harbour Special Protection Area (SPA) and Ramsar, the Solent and Southampton Water SPA and Ramsar, the Portsmouth Harbour SPA and Ramsar, and the Solent Maritime Special Area of Conservation (the habitats sites). The proposed development would support an increase in population, giving rise to increased discharges of waste water, and a likely increase in use of the habitats sites for recreational purposes. Potentially significant in-combination effects on the integrity of the habitats sites cannot therefore be excluded. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) an Appropriate Assessment is therefore required.
19. The designation of the habitats sites relates to the priority habitats and species, including the range of birds, that they support. Conservation objectives seek to maintain or restore integrity, including that of qualifying features. Increased discharge of nutrients in waste water would contribute towards harmful eutrophication, whilst increased use of the habitats sites for recreational purposes could cause degradation and disturbance, all at odds with the conservation objectives.
20. The Council's strategy for mitigation of recreational disturbance is set out within the Solent Recreation Mitigation Strategy 2017, which was produced in cooperation with Natural England (NE). Mitigation is achieved by the funding of

Site Access Management and Monitoring measures through developer contributions. The required contribution has been secured by an obligation within the UU, which, on the above basis, passes the tests.

21. As advised by NE, mitigation of nutrients in wastewater is achieved by demonstrating nutrient neutrality. In this regard the appellant has proposed that the additional nutrient load would be offset through the purchase of credits representing land that would be removed from agricultural production at a nutrient offsetting site. The use, management and administration of land at the offsetting site is separately governed by an existing Section 106 agreement between the landowner, and the Council and South Downs National Park Authority. The scheme itself has again been established in consultation with NE. Within this context, the appellant has provided an allocation agreement entered into with the owner of the offsetting site to purchase the credits necessary. The agreement demonstrates that the additional nutrient load from the development can be offset. This in turn enables a condition to be imposed that would restrict commencement of the development until evidence of the related transaction was supplied.
22. NE has not provided any specific comment for the purposes of this AA. However, I am satisfied that the above measures are in accordance with its advice. My findings above allow me to conclude that the development would not have an adverse effect on the integrity of the habitats sites.
23. As the application is in outline, details submitted in relation to the reserved matters could result in changes to the inputs used to calculate the nutrient budget, and thus the level of required mitigation. Within this context it would be the Council's responsibility to ensure that my findings above remained valid.

Other obligations

24. Obligations within the UU additionally secure policy compliant provision and future management of on-site open space and affordable housing, together with a monitoring fee. I am satisfied that each passes the tests.

Pylons

25. Concern was raised by interested parties at the proximity of pylons, and the effect that this could have on access to mortgage finance and tenures. The Council expressed similar concern at an earlier stage in the appeal process, albeit this was withdrawn upon consideration of a 2021 appeal decision which involved a 100% affordable housing scheme on the same site. Whilst the appeal was dismissed, it was nonetheless established that the proximity of pylons would not prevent access to mortgage finance or the provision of an acceptable range of tenures. Despite the differences between the 2 schemes, I have no reason to reach a different view in relation to the current case.

Housing supply

26. The development would comply with the development plan taken as a whole. As the Council lacks a demonstrable 5-year supply of deliverable housing sites, the policies most important for determining the application are nonetheless deemed 'out-of-date'. Within this context paragraph 11 of the Framework indicates that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Here

the relevant parts of the policies with which I have established compliance are broadly consistent with those in the Framework. The Framework therefore indicates that planning permission should be granted, thus providing an additional indication that the appeal should be allowed.

Conditions

27. Conditions (1) – (4) are standard conditions setting out the procedure for approval of the reserved matters, the time period for commencement, and identifying the approved access plan for sake of certainty.
28. Condition (5) secures the provision of an Ecological Mitigation and Enhancement Strategy, drawing together previously submitted information within a single updated source. The condition is required in the interests of safeguarding protected species and ensuring that opportunities are taken to enhance biodiversity. The strategy will necessarily inform the details to be submitted in relation to the reserved matters.
29. Condition (6) secures provision of a lighting strategy within the context of the reserved matter of appearance. This is in the interests of safeguarding amenity and biodiversity.
30. Condition (7) secures provision of spot heights in relation to the reserved matter of scale, thus ensuring greater precision in the information submitted.
31. Condition (8) requires evidence of the purchase of credits in respect of the nutrient offsetting site, as considered above. The condition is necessarily drafted to prevent commencement of development until this has been provided, thus ensuring no adverse effect on the integrity of habitats sites.
32. Condition (9) secures a scheme of investigation and remediation in relation to possible contamination of the site. This is in the interests of health and safety. The condition is required pre-commencement as risks may arise from the outset of works. Condition (13) addresses unexpected risks which may arise at a later stage.
33. Condition (10) secures a scheme of surface water drainage, maintenance and management, which is required in order to ensure that the development is properly drained. The condition is required pre-commencement given the investigative works required in advance.
34. Condition (11) secures the provision of an Arboricultural Method Statement and Tree Protection Plan. Whilst some details have already been submitted, each of the above must necessarily be informed by the development layout as finalised through the reserved matters. The condition is again required pre-commencement given that trees may be affected from the outset of works.
35. Condition (12) secures a construction management plan in the interests of neighbour amenity. As impacts would arise from the outset of works the condition is once again required to be pre-commencement.
36. Condition (14) secures compliance with the optional Building Regulations standard limiting consumption of wholesome water to 110 litres per person per day. This is in accordance with Policy 40 of the Local Plan.
37. There is no need for a proposed condition requiring a landscaping scheme as this is a reserved matter. I have also not imposed a condition requiring either a

noise mitigation scheme or air quality assessment. This is because no evidence has been provided which indicates that the development would be subject of unacceptable levels of noise or air pollution. Nor have I imposed conditions requiring provision of EV charging points or a fire hydrant, as these are matters covered by the Building Regulations. Insofar as conditions requiring details of connections to utilities have also been requested, I have no reason to believe that these would not be provided. Southern Water has furthermore confirmed that capacity exists to accommodate the development. Finally, I have not imposed a condition requiring performance in excess of the Building Regulations in relation to energy consumption, or requiring a proportion of future energy use to be derived from renewable sources. This is because these requirements are not set out with an adopted development plan policy.

Conclusion

38. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: 5408/001 Rev. A.
- 5) Prior to submission of the first reserved matters application an Ecological Mitigation and Enhancement Strategy shall be submitted to and approved in writing by the Local Planning Authority. This strategy shall be informed by the recommendations of the submitted Reptile Survey and Mitigation, Phase II Bat Surveys, and Preliminary Ecological Appraisal reports, with updates as required. The development shall be implemented in accordance with the approved strategy.
- 6) Details to be submitted in relation to the reserved matter of appearance shall include a lighting strategy whose purpose will be to demonstrate how the design, specification and operation of external lighting will minimise its impacts on the occupants of nearby dwellings and biodiversity.
- 7) Details to be submitted in relation to the reserved matter of scale shall include existing and proposed ground levels, proposed finished floor levels, and the proposed completed height of all buildings.
- 8) The development hereby permitted shall not commence unless the Local Planning Authority has received the Notice of Purchase of the Credits Linked Land identified in the Nitrogen Mitigation Provision Report dated 25 July 2023,

and issued in accordance with the provisions of the legal agreement between CDC, SDNPA and John Holt dated 21 December 2022.

- 9) The development hereby permitted shall not commence until a scheme that includes the following components addressing the risks associated with potential contamination of the site has been submitted to and approved in writing by the Local Planning Authority:
 - a) a site investigation scheme based on the recommendations of the submitted Environmental Desk Study and Preliminary Risk Assessment dated January 2021, to provide information for a detailed assessment of the risks to all receptors that may be affected, including those off site.
 - b) the results of the site investigation and detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - c) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.The scheme shall then be implemented as approved.
- 10) The development hereby permitted shall not be commenced until a scheme of surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy set out in the SUDS Manual produced by CIRIA, and shall be informed by winter ground water monitoring to establish highest annual ground water levels, and percolation testing to BRE 365, or any subsequent version. The scheme shall include a timetable for its implementation, and a management and maintenance plan for the lifetime of the development, setting out any arrangements for adoption by a public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme. The approved scheme shall then be implemented in accordance with the timetable, and managed thereafter in accordance with the management and maintenance plan.
- 11) Notwithstanding details previously submitted, the development hereby permitted shall not be commenced until an Arboricultural Method Statement and Tree Protection Plan have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance.
- 12) The development hereby permitted shall not commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall be compatible with the Ecological Mitigation and Enhancement Strategy, Arboricultural Method Statement, and Tree Protection Plan approved in relation to Conditions (5) and (11), and shall include:
 - a) the days and hours when works shall take place on site;
 - b) the hours and days on which deliveries and other servicing shall take place;
 - c) identification of the location(s) in which plant, building materials and waste will be stored;
 - d) identification of the location(s) in which delivery and construction vehicles will load or unload;

- e) identification of the location(s) in which site operatives and visitors will park;
- f) details of waste management measures;
- g) details of the means of enclosure of and/or boundary hoarding around the site;
- h) details of lighting;
- i) details of measures to be taken to avoid soil and debris being spread onto the adjacent highway;
- j) dust suppression measures; and
- k) noise controls.

The development shall then proceed in accordance with the approved CMP.

- 13) Any contamination that is found during construction of the development hereby permitted that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 14) The dwellings hereby permitted shall be constructed in accordance with the optional requirement limiting consumption of wholesome water set out within Regulation 36(2)(b) of the Building Regulations.

APPEARANCES

For the Appellant

Peter Cleveland

Head of Planning, Henry Adams LLP

Stephen Evans

Director Transport Planning, Pell Frischmann

For the Council

Peter Home

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Andrew Robbins

Senior Planning Officer

Interested Parties

Jane Towers

Chidham and Hambrook Parish Council

Documents presented at the Hearing

Email correspondence between the appellant and National Highways.

Email correspondence between the appellant and West Sussex County Council.