



Appeal Decision

Site visit made on 15 June 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/L3815/W/23/3316616

Orchard Farm, Drift Lane, Chidham, Chichester PO18 8PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Herridge against the decision of Chichester District Council.
 - The application Ref CH/21/02303/OUT, dated 22 July 2021, was refused by notice dated 22 December 2022.
 - The development proposed is described as 'outline application (with all matter reserved except access) for the demolition of caravan repair building, cessation of use of land for caravan storage and removal of hardstanding and erection of 1no 4bed, 3no 3 bed, 4no 2bed and 1no 1 bed bungalows'.
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Decision

1. The appeal is allowed and outline planning permission (with all matter reserved except access) is granted for the demolition of caravan repair building, cessation of use of land for caravan storage and removal of hardstanding and erection of 1no 4bed, 3no 3 bed, 4no 2bed and 1no 1 bed bungalows at Orchard Farm, Drift Lane, Chidham, Chichester PO18 8PP in accordance with the terms of the application, Ref CH/21/02303/OUT, dated 22 July 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development as set out within the planning application form differs to that indicated in the banner heading above. However, the above description is consistent with the appeal form and the Council's decision notice. The appellant's statement indicates that the amended description is agreed.
3. The application is in outline with all matters reserved except for access. Layout, scale, appearance, and landscaping would be matters for future consideration. Whilst an indicative site layout plan has been submitted, this is for illustrative purposes only. The Council considered the appeal proposal on this basis, and I shall do the same.
4. The Council and appellant have signed a Legal Agreement (S106) pursuant to Section 106 of the Town and Country Planning Act 1990, which is dated 15 June 2023. The Legal Agreement contains obligations in relation to habitat mitigation and affordable housing provision. A Deed of Variation dated 17 October 2023 has subsequently been submitted by the appellant following consultation with Natural England. This substitutes Appendix 1 of the S106 which concerned the management and maintenance of the Nitrate Mitigation Land. I shall return to the planning obligation later in this decision.
5. Based upon the signed Legal Agreement, the Council has confirmed that adequate provision has now been made in respect of Recreational Disturbance

and the delivery of affordable housing. As such, the Council is no longer contesting the second reason for refusal. I have therefore defined the main issues accordingly.

Main Issues

6. The main issues in this appeal are the effect of the appeal proposal on:
- the provision of employment sites;
 - the Chichester and Langstone Special Protection Area (SPA) and the Solent Maritime Special Area of Conservation (SAC).

Reasons

Employment sites

7. For the purposes of Policy 26 of the Chichester Local Plan: Key Policies 2014-2029 (Local Plan), the existing caravan storage facility and workshop is classed as a business use class (B1-B8). Policy 26 thereafter seeks to protect existing employment sites where these continue to remain suitable for business and related employment uses. Thus, planning permission will only be granted for alternative uses on land or floorspace currently or previously in employment generating uses where it has been demonstrated (in terms of the evidence requirements accompanying this policy) that the site is no longer required and is unlikely to be re-used or redeveloped for employment uses.
8. The appellant submits that the appeal site cannot be reasonably described as an employment site for the purpose of Policy 26. This assertion is made on the basis that the appeal site is not an allocated site for employment within the Local Plan nor is it identified for such purposes in the Employment Land Audit 2020. Moreover, it has been put to me by the appellant that the storage facility is ancillary to the existing touring caravan site and does not generate additional employment, rather it provides a source of income for the current owners, who are in the process of retiring. I am told that the storage use will likely cease irrespective of the appeal proposal.
9. Further, the available evidence indicates that planning permission has been granted by the Council for the relocation of the existing building which currently operates as a caravan repair and maintenance workshop. Therefore, whilst the current mechanic may be pursuing mobile work, as the workshop would be re-provided on adjoining land, the economic benefit and support service to the tourism industry would not be lost because of the appeal development.
10. Under these circumstances, even if I were to take the view that the appeal site would be classified as an employment site for the purpose of Policy 26, having regard to the extent of the appeal site and the above considerations, I find that the overall loss would be minimal. This in turn must be weighed against the social and economic benefits which would result from the proposed housing development and the housing shortfall in the district, consideration of which follows later in my decision.
11. Accordingly, whilst there is a degree of conflict with Appendix E of Policy 26 in so far as there is no marketing evidence to demonstrate that the loss is acceptable, for the above reasons, I find that the appeal development would

not compromise the desire to protect existing employment sites where these continue to remain suitable for business and related employment uses. The proposal therefore would not conflict with the overall aim of the policy.

European Designated Sites

12. The appeal site lies within the Zone of Influence of the Chichester and Langstone Harbours SPA and Ramsar, and the Solent Maritime SAC which are designated under the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations). The Chichester Harbour Site is separately notified at national level as a Site of Special Scientific Interest (SSSI). The available evidence indicates that these areas are designated as internationally important sites as they support a significant waterbird assemblage and wetland habitats.
13. The appeal proposal would result in the maximum provision of nine new dwellings. Foul sewage from the development would be disposed of via the mains sewer. It is undisputed by the main parties that the appeal scheme would have a likely significant effect on the integrity of these designated sites (either individually or in combination with other plans or projects) through recreational pressures and increased eutrophication unless suitable mitigation measures are provided. In their consultation response, Natural England also advises that the proposed development could damage or destroy the interest features for which the Chichester Harbour SSSI has been notified. In these circumstances, as the competent authority, it is necessary for me to conduct an Appropriate Assessment.

Recreational disturbance

14. The available evidence indicates that proposals which would have a recreational impact on the Solent SPAs are required to make a financial contribution towards the Solent Recreation Mitigation Strategy (also known as the Bird Aware Solent 2017). This sets out measures which are designed to avoid bird disturbance from recreational activities.
15. The Legal Agreement submitted as part of the appeal process would secure the payment of the required recreation disturbance contribution prior to the commencement of the development. I have consulted with Natural England which has confirmed that the financial contribution to mitigate recreational disturbance is sufficient to avoid an adverse impact to the integrity of the Chichester and Langstone Harbours SPA and their relevant features.

Nutrient neutrality

16. In March 2022, Natural England published a letter which provides advice for development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitat sites cannot be ruled out. The advice from Natural England is that new residential development must achieve 'nutrient neutrality' meaning that nutrient damage to Habitat Sites will not be made worse through development. The advice thereafter sets out how a proposal can achieve this through the implementation and future management of appropriate mitigation including the creation of new wetlands, woodland, or grasslands habitats.
17. The appeal is accompanied by a Nitrate Budget Report 2022. The calculations therein confirm that the total nitrogen load resulting from the appeal proposal would exceed the existing use of the appeal site. To this end, woodland

planting referred to as the 'Nitrates Mitigation Land' is proposed to offset the increased nitrogen and thus achieve nutrient neutrality. The location of the woodland and extent of planting is identified on the submitted plan whilst Appendix 1 as set out in the Deed of Variation makes provision for the implementation, maintenance, monitoring and management of the planting for the lifetime of the development. In responding to the proposal Natural England indicate that the mitigation will sufficiently offset any additional nutrient load resulting from the proposed development. Whilst concerns were initially expressed in relation to the future management of the grassland/wildflower meadow and potential for failure, this has been since been removed and substituted with additional woodland planting as detailed within the revised Appendix 1. This is consistent with dialogue between Natural England and the main parties.

Conclusion

18. Having had regard to the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), together with national policy and guidance on the use of planning conditions, I am satisfied that the obligation is directly related to the appeal development and is necessary to make the development acceptable in planning terms. In addition, as it relates to a standard charge and offset calculation which are based upon the scale and type of development proposed, I consider it to be fairly and reasonably related in scale and kind to the appeal development. Consequently, it would meet the tests set out within the CIL Regulations and the Framework. I therefore afford the legal agreement significant weight.
19. As the competent authority, I need to ascertain that the proposal would not have an adverse effect on the integrity of the Chichester and Langstone Harbours SPA and Ramsar, and the Solent Maritime SAC. For the reasons outlined, I am satisfied that with the proposed avoidance and mitigation measures in place, secured through the Legal Agreement, the appeal development would not have an adverse effect on the identified designated sites. The development would therefore comply with the Habitat Regulations. It would also accord with Policy 50 of the Local Plan which seeks to ensure that appropriate avoidance/mitigation measures are implemented to avoid any likelihood of a s significant effect on designated sites. It would also be consistent with the habitat objectives of the Framework.

Other Matters

20. Local Plan Policy 34 sets out that a 30% affordable housing contribution will be sought where there is a net increase in dwellings. On sites of 6 to 10 dwellings in areas designated as rural areas under section 157 (1) of the Housing Act 1985, Policy 34 indicates that the Council will seek a financial contribution for the provision of affordable dwellings as a commuted sum unless the developer makes onsite provision.
21. As the application is made in outline, it is not possible to agree an exact figure for the contribution at this stage. However, the Legal Agreement sets out that the commuted sum would be calculated based on £350 x the square meterage of the gross internal floor area of the proposed dwelling units. This sum would be secured prior to the commencement of the development. Based on the evidence before me, I find that the proposed affordable housing contribution would accord with the Policy 34. Furthermore, it would be directly related to

the development and fairly and reasonably related in scale and kind to it. The Legal Agreement would therefore satisfy the statutory tests set out in the CIL Regulations 2010 (as amended) and the Framework.

22. The appeal site is located outside of a defined settlement boundary. However, Policy LP1 of the Chidham and Hambrook Neighbourhood Plan 2016 (Neighbourhood Plan) provides for new housing in the countryside on windfall sites. These sites are identified as those of ten or less units on previously developed land. Based upon the evidence before me, I have no reason to conclude that the proposal would conflict with this policy. Consequently, whilst having had regard to the third-party comments regarding the principle of the proposed development and housing need, I am satisfied that proposed development would not undermine the spatial strategy of the Development Plan, taken as a whole.
23. The appeal site lies within a strategic wildlife corridor. The Council's committee report concludes that the proposal will not adversely affect the potential or value of the wildlife corridor based upon the mitigation and enhancements detailed within the submission. These measures include sensitive lighting and the protection of existing trees and hedgerows and would be secured by condition. In the absence of any evidence to the contrary, I have no reason to disagree with the Council's findings on this matter. Therefore, notwithstanding the concerns of the interested parties, I am not persuaded that permitting the proposal would undermine the objectives of Local Plan Policy NE4.
24. Concerns relating to highway safety, impact on protected species and the Chichester Harbour Area of Outstanding Natural Beauty have also been brought to my attention. These matters are largely identified and considered within the Council's report to committee. I note that the Council did not consider that these were reasons to refuse the application and I have not been provided with any substantive evidence which would prompt me to disagree with the Council's conclusions on these matters.
25. The ability of the Southern Water (SW) to accommodate additional waste generated by the proposal has been questioned. In commenting on the planning application, SW confirm that they can facilitate foul sewerage and that the connection would be subject to a formal application process, independent of the planning regime. Therefore, based on the available evidence, I have no reason to conclude that the foul waste could not be disposed of via the mains sewer. In determining the appeal, I have had regard to the comments made by interested third parties regarding precedent. However, I have determined this appeal on its own merit, in accordance with the development plan and relevant material considerations.

Conditions

26. I have had regard to the draft planning conditions that have been suggested by the Council and I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
27. In addition to the standard outline time limit conditions, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, in so far as they relate to the matter of access. This is in the interests of certainty. I have attached a condition requiring details of the

finished floor levels in the interests of the character and appearance of the area. Details of the existing levels are not necessary as these are indicated on the submitted plan.

28. To protect living conditions and the environment, it is necessary to address potential land contamination and secure details of construction management, hours of construction and foul drainage. To reduce flood risk, it is necessary to secure details of surface water drainage. In the interests of biodiversity, conditions requiring details of external lighting, implementation of the dormice enhancement measures, adherence to the recommendations set out within the Ecological Appraisal together with the submission of a scheme of ecological mitigation are imposed. To promote sustainable design and energy efficiency, a condition requiring a detailed statement addressing matters such as CO2 emissions is necessary.
29. To promote sustainable transport options, a condition requiring cycle storage provision is necessary. In the interests of highway safety, conditions requiring construction of the access as shown on the submitted plan together with the provision of parking/turning within the site is necessary. In the interests of fire safety, it is necessary to secure the provision of hydrants.
30. A condition requiring adherence to the nitrate mitigation measures is not necessary as this would be secured by the legal agreement. Conditions requiring details of landscaping, tree protection measures/buffers and the timings of vegetation removal are not necessary as landscaping is reserved for future consideration. This therefore would be subject to review at the reserved matters stage. The suggested condition relating to water efficiency is not necessary as it would duplicate Part G of the Building Regulations. Fire safety would likely be covered by separate legislation and there is no information before me to indicate why this is necessary. Thus, I have not imposed a condition requiring the provision of fire hydrants.

Planning Balance and Conclusion

31. The Council cannot demonstrate a five-year supply of deliverable housing sites. In these circumstances footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The site is located within a protected area.
32. Paragraph 219 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. Whilst the proposal would result in the loss of a site which currently generates income, it is not allocated for employment purposes within the development plan. I therefore afford this moderate weight.
33. The Framework encourages a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in plans, where this would help to meet identified development needs. The appeal proposal would make a meaningful contribution towards housing supply through the delivery of nine new homes. This housing would utilise a windfall site and the provision of a mixed scheme, including affordable housing would provide notable local housing benefits. Future occupants would be able

to access services and facilities including a primary school, public house, and village hall close to the appeal site, which would be within walking distance thus supporting the local economy. Settlements further afield would also be accessible via sustainable transport means. The proposal would also provide biodiversity enhancement.

34. Overall, the appeal scheme would have notable benefits that would boost the supply of housing within the district. Consequently, I find that the modest adverse impact of the appeal scheme would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, the other considerations indicate that the decision should be taken otherwise than in accordance with the development plan. Therefore, the appeal is allowed.

H Wilkinson

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 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 the 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 plans in so far as it relates to access - Drawing 11 (Location Plan) and Drawing 13C (Illustrative Site Plan).
5. No development shall commence until full details of the proposed finished floor levels of all buildings and hard landscaped surfaces have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
6. No development shall commence on site until a scheme to deal with contamination of land and/or controlled waters has been submitted to and approved in writing by the local planning authority. Unless the local planning authority dispenses with any such requirement specifically in writing the scheme shall include the following, a Phase 1 report carried out by a competent person to include a desk study, site walkover, production of a site conceptual model and human health and environmental risk assessment, undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.
7. If the Phase 1 report submitted pursuant to Condition 6 identifies potential contaminant linkages that require further investigation, then no development shall commence until a Phase 2 intrusive investigation report has been submitted to and approved in writing by the local planning authority. This shall detail all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011+A1:2013 - Investigation of Potentially Contaminated Sites - Code of Practice. The findings shall include a risk assessment for any identified contaminants in line with relevant guidance.
8. If the Phase 2 report submitted pursuant to Condition 7 identifies that site remediation is required then no development shall commence until a Remediation Scheme has been submitted to and approved in writing by the local planning authority detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. Any ongoing monitoring shall also be specified. A competent person shall be nominated by the developer to oversee the implementation of the Remediation Scheme. The report shall be undertaken in accordance with national guidance as set

out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11. The remediation scheme shall thereafter be fully implemented in accordance with the approved details.

9. The development hereby permitted shall not be first occupied until a verification report for the approved contaminated land remediation has been submitted to and approved in writing by the local planning authority. The report shall be undertaken in accordance with national guidance as set out in DEFRA and the Environment Agency's Model Procedures for the Management of Land Contamination CLR11.
10. No development shall commence on site, including any works of demolition, until a Construction and Environmental Method Statement (CEMP) has been submitted to, and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
11. No development shall commence on site until details of the proposed overall site wide surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The design shall follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. The surface water drainage scheme shall be implemented as approved and no occupation of any of the development shall take place until the complete surface water drainage system has been implemented. The surface water drainage system shall be retained as approved thereafter.
12. No development shall commence until a foul drainage scheme for the site has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be undertaken in accordance with the approved details and no occupation of any of the development shall take place until the approved works have been completed. The foul drainage system shall be retained as approved thereafter.
13. Details of any external lighting shall be submitted to and approved in writing by the local planning authority prior to first installation. This information shall include a layout plan with beam orientation and schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting scheme shall take into consideration the presence of bats in the local area and shall minimise potential impacts to any bats using trees and hedgerows by avoiding unnecessary artificial light spill through the use of directional lighting sources and shielding. The lighting shall be installed, maintained, and operated in accordance with the approved details thereafter.
14. Prior to the first occupation of any dwelling, the dormice enhancement measures set out within the enhancement strategy (Ecology Co-op and the Dormouse Survey Report June 2021, produced by Kingfisher Ecology Ltd) shall be provided on site. The dormice enhancement measures shall thereafter be managed in accordance with the ecological management plan

that has first been submitted to and approved in writing by the local planning authority.

15. Notwithstanding any details submitted, prior to the first occupation of any dwelling, an ecological mitigation scheme including an implementation and management strategy shall be submitted to and approved in writing by the local planning authority. The scheme shall reflect the recommendations set out within the Preliminary Ecological Appraisal and the comments of the CDC Environmental Strategy Unit. Thereafter the ecological mitigation measures shall be implemented in accordance with the approved details and thereafter be permanently retained.
16. Prior to the first occupation, cycle storage provision for that dwelling shall be provided in accordance with details to be first submitted to and approved in writing by the local planning authority. The cycle storage provision shall thereafter be permanently retained.
17. Prior to the first occupation of any dwelling the vehicular access shall be constructed in accordance with plans and details that shall first have been submitted to and approved in writing by the local planning authority. The access shall thereafter be permanently retained.
18. Prior to the first occupation of that dwelling, the vehicle parking and turning spaces shall be laid out and constructed (including drives/garages) in accordance with details that shall first have been submitted to and approved in writing by the local planning Authority. These spaces shall thereafter be permanently retained.
19. A detailed Sustainable Design and Construction statement including an implementation strategy shall be submitted with the first application for reserved matters and any subsequent application for reserved matters shall demonstrate how the proposal complies with the approved details. The statement shall demonstrate how CO2 emissions saving of at least 19% through improvements to the fabric of the buildings together with at least a further 10% improvement through renewable resources will be achieved. In addition, the statement shall include the proposed location, form, appearance and technical specification of the PV panels and the air/ground source heat pumps (including acoustic performance). The development thereafter shall be carried out in accordance with the approved details and thereafter be permanently retained.
20. The development shall be undertaken strictly in accordance with the method of works and recommendations detailed within the Preliminary Ecological Appraisal V2 (October 2021) produced by the Ecology Co-op and the Dormouse Survey Report (June 2021) produced by Kingfisher Ecology Ltd.
21. The construction of the development and associated works shall not take place on Sundays or Public Holidays or any time otherwise than between the hours of 0730 hours and 1800 hours Mondays to Fridays and 0800 hours and 1300 hours on Saturdays.

END OF SCHEDULE