



Appeal Decision

Site visit made on 12 February 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 5th April 2024

Appeal Ref: APP/L3815/W/23/3332866

Land off Longacres Way, Chichester, West Sussex PO20 2EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Fortitudo Ltd and Hanbury Properties (Chichester) Limited against Chichester District Council.
 - The application Ref is O/23/00188/FUL.
 - The development proposed is erection of apartment building including Class E floor space, with associated car parking, bike stores, landscaping and utilising existing access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is made against the failure of the Council to give notice of its decision within the prescribed timeframe. However, the Council has outline putative reasons for refusal within their appeal submission, these have framed the main issues of the appeal.
3. A consultation on the Chichester Local Plan 2021-2039: Proposed Submission (eLP) ended in March 2023, as such it has reached the Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage (Regulation 19 Stage). The eLP is yet to be submitted for examination but the Council anticipate it will be submitted in 'early 2024'. Given the eLP is yet to be submitted for examination and there is no evidence on the extent of unresolved objections to relevant policies, in accordance with the National Planning Policy Framework (the Framework), I ascribe limited weight to the emerging policies.
4. The appeal site has been subject to several planning applications. The most pertinent to the appeal proposal are an outline planning permission¹, on a wider parcel of land, known as Shopwyke, for an urban extension of 500 dwellings and a further outline planning permission² for 85 dwellings in addition to the previous permission. Both parties acknowledge that these outline planning permissions are time-expired and reserved matter approvals have been granted for 585 dwellings. Therefore, the appeal proposal is in addition to that development and is the subject of a standalone application for full planning permission.

¹ Planning permission Ref. 11/05283/OUT permitted 9 August 2013

² Planning permission Ref. 15/03720/OUT permitted 18 November 2016

5. A Planning Agreement (S106) under section 106 of the Town and Country Planning Act 1990 signed by the appellants, Chichester District Council, and West Sussex County Council has been submitted with the appeal. If the appeal is allowed, it would secure planning obligations binding to the land including the payment of £50,497 towards 'Recreation Disturbance Mitigation' and a 'Highway Network' contribution of £451,252, the submission of a travel plan for approval and the payment of a monitoring fee, and to enter into an agreement with a 'Car Club' operator.
6. Further to the submission of the S106, a Planning Obligation by deed of undertaking (UU) also under section 106 of the Town and Country Planning Act 1990, signed by the appellants, has been submitted with the appeal. If the appeal is allowed and I decide that the Highway Network Contribution, as detailed in the S106, is not payable then it would secure a planning obligation binding to the land which requires the payment of an alternative Highway Network Contribution of £227,505.

Main Issues

7. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the proposal would make an appropriate contribution toward highway improvements, including a travel plan; and
- whether the proposal would provide adequate public amenity space and equipped play space.

Reasons

Character and appearance

8. The site is adjacent to an apartment complex with commercial units on the ground floor and an area of housing, which was under construction at the time of my site visit. The tallest section of the apartment complex is 4 storeys, whereas the houses under construction tend to vary between 2 and 2.5 storeys. Also in proximity to the site are large industrial units, a care home, which was also under construction at the time of my site visit, and a community hub. As such, the surrounding area is characterised by a mix of uses and buildings of varied scale and design.
9. There is a wide footpath in front of the neighbouring ground-floor commercial units, but otherwise the buildings tend to be sited close to Longacre Way and generally front onto the road. The siting of these buildings, along with their height, create a sense of enclosure. Away from the spine road, there is a looser pattern of development which transitions into spacious, verdant areas of open space often surrounding lakes.
10. Whilst the appeal site is quite constrained in size, it provides a transition between the denser development of the urban centre and the suburban character of the predominantly residential development. Furthermore, the site fronts onto Longacre Way where the prevailing pattern of development creates a sense of enclosure but backs onto a verdant, spacious area surrounding a lake. The appeal site is characterised by the transition between different areas of the wider Shopwyke development.

11. The proposed U-shaped building with the proliferation of parking spaces toward the centre of the site fails to address Longacre Way in a similar manner to surrounding development. Large sections of the building would be set further back from the road than neighbouring development which would disrupt the sense of enclosure. The proposed set back would be much larger than the adjacent apartment complex. Also, the proposed parking area, sited in the space between the building and the road, would be a semi-private space, unlike the public space in front of the commercial units. Moreover, large surface car parks are not a common feature within the street scene along Longacre Way. For these reasons, the proposed building would appear incongruous.
12. Given the proposed building would span almost the entire length of the site, it would have a strong horizontal emphasis. The form of the building would appear as a visual barrier restricting views across the site to and from the verdant open space around the lake to the rear of the site. Furthermore, the design alongside the scale, massing, and siting of the proposed building in proximity to the open space would disrupt the spacious character of that area.
13. It is not necessary for the proposal to strictly conform with the design code which formed part of the outline planning permission for the wider Shopwyke development, as it is the subject of a standalone application. Nevertheless, the design code is a material consideration as it provides detail on how the wider area is being developed. The design code indicates that a building on the appeal site could be 5 storeys and the proposed building is only 4 storeys tall. However, the broadly consistent height of the proposed building fails to address the significant difference in height between the neighbouring developments.
14. Moreover, due to the siting of the proposed building, the blank façade on the side of the neighbouring apartment block would be prominent in mid-distance views along Longacre Way. The façade would appear stark and have a harmful effect on the character of the area. Additionally, the proposed class E use would be sited away from nearby commercial, and community uses and closer to neighbouring houses, this would confuse the legibility of the area. These aspects of the design, alone and in combination, demonstrate how the proposal fails to respect the character of the surrounding area.
15. Despite a limited amount of public amenity space and a lack of equipped play space the proposed building would appear similar to the neighbouring apartment complex, in this regard. The proposed materials of the external surfaces would be appropriate for the proposal's location. Likewise, a bold, contemporary design, including a varied roofscape, that does not replicate existing buildings could be a positive feature in this prominent location. This approach is supported by the National Design Guide³ (the NDG) where it indicates that well-designed places do not need to copy their surroundings. However, this would not overcome the harm I have identified above.
16. Overall, the proposal would have an unacceptably harmful effect on the character and appearance of the area. As such, it would be contrary to Policy 33 of the Chichester Local Plan: Key Policies 2014-2029 (LP) which indicates that permission will be granted where it can be demonstrated that proposals

³ National Design Guide, Planning practice guidance for beautiful, enduring and successful places, Ministry of Housing, Communities & Local Government, January 2021

meet the highest standards of design, and they respect and, where possible, enhance the character of the area.

17. The proposal would also be contrary to paragraph 131 and 135 of the National Planning Policy Framework (the Framework). These paragraphs indicate that the creation of beautiful places is fundamental to what the planning process should achieve and that decisions should ensure that developments are sympathetic to local character. The proposal would also be contrary to paragraphs 41, 43, 53, and 66 of the NDG. These paragraphs indicate that well-designed new development responds positively to the features of the surrounding context beyond the site boundary; is integrated into its wider surroundings; and is influenced by the characteristics of the existing built form; built form is determined by good urban design principles that combine layout, form, and scale.

Highway improvements

18. National Highways did not object to the planning application, subject to the Council securing a relevant contribution toward the A27 mitigation in line with the Planning Obligations & Affordable Housing Supplementary Planning Document, July 2016 (the 2016 SPD); and, subject to the contribution being increased from 2012 prices stated in the 2016 SPD to current day prices.
19. It is not disputed that the cost of construction has increased since the 2016 SPD was adopted. The draft Chichester Bypass Mitigation SPD, August 2023 (the draft SPD) seeks to secure additional funding to ensure that the Council will be able to adequately mitigate the effect of proposed development on the A27. However, the increased contributions sought through the draft SPD are partly based on the need arising from the proposed development set out in the eLP; rather than just through increased construction costs. The requirement based on this document would be the £451,252 secured by the Planning Agreement under Section 106, as set out in paragraph 5 above.
20. The Planning Practice Guidance states "Policies for planning obligations should be set out in plans and examined in public."⁴ The proposed allocations set out within the eLP have not been subject to an examination in public. In this scenario, and without substantive evidence of the costs of highway improvements required because of this development alone, a contribution which is more than the level set out in the 2016 SPD is not in my view justified. Furthermore, this proposed contribution would fail to meet the Regulation 122 tests⁵, and would not be in accordance with paragraph 57 of the Framework, as it would not be fairly and reasonably related in scale and kind to the development.
21. Whilst in a previous appeal⁶ parties agreed to a contribution toward a package of A27 improvements that was more than the contribution set out in the 2016 SPD, that was based upon specific costs. The evidence from that appeal is not before me so I cannot form a similar conclusion in this instance. In any event, every appeal is assessed on its own merits.
22. Notwithstanding the above, the 2016 SPD states "Financial contributions will be index-linked in order to allow for the fluctuation of prices between the date the

⁴ Paragraph 004 Reference ID: 23b-004-20190901

⁵ Regulation 122(2) of the Community Infrastructure Level Regulations 2010

⁶ APP/L3815/W/3318548

agreement is signed and the date the payment is made". There is no mechanism within the UU for the contribution to change in line with inflation following its signing. Therefore, the proposed contribution of £227,505 set out in the UU is not in accordance with the 2016 SPD. The proposed contribution would also fail to meet the Regulation 122 tests, and would not be in accordance with paragraph 57 of the Framework, for the same reasons as the proposed S106 contribution.

23. In addition, the S106 includes an obligation which requires the landowner to agree a travel plan with West Sussex County Council, to pay an appropriate monitoring fee and appoint a co-ordinator. I am satisfied that the S106 would secure an appropriate Travel Plan for the proposal.
24. For these reasons, the proposal would not make an appropriate contribution toward highway improvements, but an acceptable Travel Plan would be provided. As such, it would be contrary to LP Policy 9 which indicates that all development will be required to provide or fund new infrastructure required both on- and off-site, as a consequence of the proposal.

Open space and equipped play space

25. The Chichester Open Space Calculator indicates that the site should include 718m² of public amenity space and 215m² of equipped play space. The appeal proposal does not include any equipped play space and a very limited amount of public amenity space. It is not disputed that the proposal does not include the levels of open space specified by the calculator.
26. Whilst the appeal proposal comprises of 1- and 2-bedroom apartments, which are not traditionally family accommodation, the size of the apartments is factored into the calculator and, therefore, does not justify the under provision of both amenity space and equipped play space.
27. Nonetheless, the proposal is central to the wider Shopwyke development. The exact size of all the houses permitted as part of the wider development is not before me. However, assuming all 585 houses, committed to off-site are 4+ bedroom dwellings, alongside 26 one bed and 61 two bed apartments, the Chichester Open Space Calculator identifies a requirement for 2,585m² of play space and 62,893m² of amenity space. The permitted wider scheme delivers 2,989m² of play space and 81,200m² of amenity space. As such, the wider scheme includes a substantial provision of both equipped play space and amenity space, which is more than the requirement set out by the Open Space Calculator, which in turn is inflated by the inputted house sizes.
28. I acknowledge interested parties' concerns that some of these spaces have not been delivered yet. However, the enforcement of their delivery is not a matter before me and based on the evidence those spaces should be delivered. The appeal site would be in proximity to a significant provision of both equipped play space and public amenity spaces, within the prescribed distances set out within the 2016 SPD.
29. Overall, given the substantial provision of both public amenity space and equipped play space in the surrounding area, I conclude that the proposal would provide adequate public amenity space and, in this instance a lack of provision of equipped play space is acceptable. It would therefore be in accordance with LP Policy 54 which indicates that new residential development

will be required to contribute toward the creation of new open space or improve the accessibility of existing open space.

Other Matters

30. The appeal site is located close to Chichester and Langstone Harbours Special Protection Area, Singleton and Cocking Tunnels Special Area of Conservation (SAC), Solent Maritime SAC and Ramsar site. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. Notwithstanding the S106 submitted with the appeal, as I have found the appeal proposal to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment, or to consider this matter further.
31. Within the evidence the appellant has made specific reference to the Framework, and adopted and emerging development plan policies, in relation to matters that are not in dispute or pertinent to the main issues. The proposal complies with some sections of the Framework and various local policies including those that set out the principle of the proposed development, relate to flood risk, and set out the requirement to provide a Travel Plan. Regardless, this does not alter my assessment on the main issues of this appeal.
32. Despite the strategic policies contained within the LP being more than 5 years old, as the eLP has reached the Regulation 19 Stage, it is only necessary for the Council to be able to demonstrate 4 years of deliverable housing land supply. It is not disputed that the Council can demonstrate more than 4 years of deliverable housing land supply. Nevertheless, the provision of 87 apartments would significantly boost the supply of homes in the area, in accordance with paragraph 60 of the Framework. Other benefits of the proposal include those related to the construction of the scheme and through the increase in population living in the area. Overall, the benefits of the proposal would attract significant weight but would not outweigh the substantial harm identified above.

Conclusion

33. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR