



Appeal Decision

Inquiry held on 5, 6 and 7 February 2014

Site visit made on 7 February 2014

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 March 2014

Appeal Ref: APP/L3815/A/13/2198103

Land to the north of Alfrey Close, Southbourne, West Sussex, PO10 8ET

- 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 Hallam Land Management Ltd against the decision of Chichester District Council.
 - The application Ref SB/12/04701/OUT, dated 13 December 2012, was refused by notice dated 14 March 2013.
 - The development proposed is a 60 bed care home (comprising café, hairdressers, treatment room, shop and cinema), 40 assisted living units, 30 age-restricted cottages for occupation by the over 55s, access, sustainable drainage measures, allotments, structural landscape planting and associated works.
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Decision

1. The appeal is allowed and outline planning permission is granted for a 60 bed care home (comprising café, hairdressers, treatment room, shop and cinema), 40 assisted living units, 30 age-restricted cottages for occupation by the over 55s, access, sustainable drainage measures, allotments, structural landscape planting and associated works at Land to the north of Alfrey Close, Southbourne, West Sussex, PO10 8ET in accordance with the terms of the application, Ref SB/12/04701/OUT, dated 13 December 2012, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The application is made in outline with access only to be considered at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. However, the Council considered the proposal and both Parties have based their cases in this appeal, on the various indicative plans and illustrations that have been provided by the Appellant. I will determine this appeal on the same basis.
3. An agreement made pursuant to s.106 of the 1990 Act has been entered into by, among others, the Appellant and the Council. This agreement contains planning obligations with regard to matters including affordable housing and infrastructure. I will consider this obligation below.

The appeal site

4. The appeal site is currently in agricultural use as arable farmland and it has an area of about 3.3 hectares. The site is in the countryside within the designated

Rural Area and within the designated Chichester and Emsworth Strategic Gap; it is located adjacent to the western edge of Southbourne and adjoins its settlement policy area on its eastern and southern sides. To the north lies the remainder of the existing field which has the South Coast railway line along its northern boundary. Beyond the railway line to the north-east there is more land within the settlement policy area which is primarily residential; to the east the area is also residential; and to the west there are arable fields beyond which there is the settlement of Hermitage.

5. The site is accessed through a field gate off Alfrey Close which itself leads onto Main Road, the A259, located to the south. There are residential properties along Alfrey Close and also along Main Road in this vicinity.
6. The site is mostly flat with a gentle slope downwards towards the south-west. A public right of way (No.242) runs through the site in an east-west direction and leads to Garsons Road. This public right of way also runs along the western boundary of the site. Another public right of way (No.241) runs along Tuppenny Lane further to the west.

The proposed development

7. The proposed development includes a 60 bed care home which, according to the illustrative masterplan¹, would be located within the central part of the site and which would surround a private courtyard garden with the building housing the assisted living units. The care home would be designed to a maximum of 2.5 storeys and would comprise a café, hairdresser, treatment room, small shop and a small cinema. The 40 assisted living units would be a mix of 1 and 2 bed units for those over 55 years old in a building of between 2 and 1.5 storeys. The 30 age restricted dwellings, also restricted to occupation by the over 55s, would be a mix of 2 and 3 bed dwellings which would be a maximum of 2 storeys with single storey garages. These dwellings would be in the eastern and northern parts of the site.
8. The western part of the site would have a number of open space uses including 10 allotment plots, a community garden, a pond/wetland habitat and a woodland belt.
9. The vehicular access would be from Alfrey Close at the south of the site and the public right of way (No.242) would be retained and enhanced.

Main Issues

10. From the notice of refusal and from the matters in dispute in the statement of common ground, I consider that the main issues are:
 - a) Whether or not the proposed development is acceptable in this location having regard to the development plan, the National Planning Policy Framework (the Framework) and other material considerations. The latter includes housing land supply; the actual or perceived coalescence of the settlements of Southbourne and Hermitage; landscape impacts; and the issue of best and most versatile agricultural land.
 - b) Whether the assisted living units would fall under Use Class C3 or Use Class C2 for the purposes of contributions to the area's affordable housing needs.

¹ Drawing No 3615-PL-04 Rev M

- c) Whether there are appropriate arrangements to meet affordable housing and other infrastructure needs that would arise from the development.

Reasoning

Whether the proposal is acceptable

Policy

11. The Chichester District Local Plan Review was adopted in 1999. Saved Policy BE1 defines the settlement policy area boundaries within which development will be permitted subject to accordance with other built environment policies. Saved Policy RE1 restricts development outside settlement policy areas and saved Policy RE6 provides that 'only in compelling circumstances which are of sufficient weight to override the importance of preventing the coalescence and retaining the identity and amenity of settlements will development which would be harmful to these objectives be permitted in the [Chichester and Emsworth] strategic gap' and additionally 'opportunities will be sought to conserve and improve the landscape and amenity of strategic gaps to enhance their value as open countryside'. The weight I give to these policies is considered below.
12. Policy 2 of the Emerging Local Plan has a presumption in favour of sustainable development within the settlement boundaries, which will be reviewed through the various development plan processes, reflecting the general approach that actual or perceived coalescence of settlements will be avoided. Policy 20 applies specifically to Southbourne and provides for, among other things, amendments to the settlement boundary; the provision of 300 homes; and that development should be located and designed to minimise impact on the surrounding landscape avoiding coalescence with neighbouring settlements. The Emerging Local Plan is in the relatively early stage of the process towards adoption and I therefore give it limited weight.
13. The Council has published an 'Interim Policy Statement on Housing - Facilitating Appropriate Development' (FAD)² which recognises that the Council does not have an up-to-date Local Plan. The FAD aims to provide a local interpretation of sustainability and seeks to pull national guidance and existing saved Local Plan policy together to assist in the determination of planning applications. It seeks, among other things, to prevent development coming forward in the wrong locations and of an inappropriate scale.
14. The FAD relates to sites outside existing settlement policy areas and sets out 18 criteria against which applications should be considered. The relevant criteria in this appeal³ are criterion 7 which states 'the likely impact of the development individually, or cumulatively, does not result in the actual or perceived coalescence of settlement policy areas'; criterion 12 which states 'sites that have been artificially subdivided to limit the proposal to a first phase of a large development in order to comply with criterion 17 will not be acceptable'; and criterion 17 which states 'the scale of the development should be appropriate to the settlement policy area. As a guide, this is likely to mean sites of up to about 50 units adjoining the settlement hub of Southbourne'. The Council additionally referred to criterion 2 which seeks to conserve or enhance landscape character. The FAD is not a supplementary planning

² Updated 9 October 2012

³ As cited on the notice of refusal

document and it was not the subject of consultation, I therefore give it limited weight.

15. The Framework advises that at its heart there is a presumption in favour of sustainable development and for decision makers this means, where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole⁴.

Housing land supply

16. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements⁵. The most recent information from the Council shows that the Council fails to meet this requirement in that there is a four year housing land supply and a shortfall of 748 net dwellings⁶. There is no dispute between the Parties that the Council does not have a five years housing land supply.
17. In these circumstances the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date⁷. Saved Local Plan policies BE1 and RE1 are therefore out-of-date as they constrain the location of housing development.
18. The saved Local Plan policies, insofar as they relate to the supply of housing are out-of-date and the Local Plan is silent with regard to the provision of housing of the type proposed. The undisputed evidence to the Inquiry was that there was a need for all types of housing for all levels of social strata, including both open market and affordable housing for the elderly, in Chichester District.

Coalescence

19. The appeal site is to the west of the settlement policy area of Southbourne. Its southern boundary comprises the rear boundaries of a strip of residential development along the Main Road; the eastern boundary of the appeal site follows the western settlement policy area boundary in an approximate north-south line; the western boundary of the appeal site also runs approximately north-south and it would be some 400m from the eastern settlement boundary of Hermitage⁸. The settlement boundary of Hermitage is some distance to the west from what on the ground appears as the boundary of built development, Tuppenny Lane⁹.
20. The proposal would result in there remaining a wide expanse of open field between Southbourne and Hermitage for the depth of the proposal with a wider open expanse remaining between the settlements to the north of the appeal site up to the railway line. Given that the dictionary definition of 'coalesce' is

⁴ Paragraph 14 of the Framework

⁵ Paragraph 47 of the Framework

⁶ Mr Davidson's supplementary note - the position as at 27 January 2014

⁷ Paragraph 49 of the Framework

⁸ Paragraph 7.7 of Miss Toyne's proof as corrected. The 400m would comprise 260m of open field and 140m comprising the existing development to the west of Tuppenny Lane

⁹ Document 5 - maps of settlement policy area boundaries

'come together and form one whole'¹⁰ I find that there would be no actual coalescence. However, I have made this finding from lines on a map and what could be perceived could be a different matter depending on the impact of the proposal on the landscape which I consider below.

21. The saved policies in the Local Plan are only out-of-date insofar as they relate to housing. Paragraph 215 of the Framework advises that 'due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework' and one of the core planning principles of the Framework is recognising the intrinsic character and beauty of the countryside¹¹. In my opinion, saved Local Plan policy RE6 is not inconsistent with the Framework in that it seeks, in the main, to restrict development in the Chichester-Emsworth Strategic Gap. However, the policy refers to 'preventing coalescence' and I consider there would be no breach of the policy in that there would be no coalescence, nor given the distance that would remain between Southbourne and Hermitage would there be any harm to the identity of those settlements.

Landscape

22. The appeal site is within the Southbourne Coastal Plain which is described in the West Sussex Landscape Character Assessment as having 'a relatively open character, where sporadic settlements hug the tops of the inlets of Chichester Harbour and are mainly located along the coastal road, the A259. The landscape which, despite lacking strong distinctive character, has strategic value and has great potential to improve the setting of the surrounding urban areas'. The key characteristics include 'low lying, flat open landscape; degraded tree and hedgerow framework with a low density of hedgerows and hedgerow trees with occasional shelterbelts; large scale arable farming; narrow gaps of open land between Hermitage, Southbourne, Nutbourne and Chidham where the gaps between settlements provide important visual relief to the built-up areas, although their landscapes character is often poorly defined, with a degraded hedgerow network'¹².
23. In the Chichester District Landscape Capacity Study¹³ the appeal site is included in Landscape Character Area 77. The final assessment of landscape sensitivity was found to be 'substantial' and the landscape value was 'slight'. Area 77 was designated as having low/medium landscape capacity for development which indicates that 'development would have a significant and detrimental effect on the character of the landscape as a whole. Development in these character areas should only be on a very small scale and proposals would need to demonstrate no adverse impacts on the setting to settlement or the wider landscape'¹⁴.
24. Area 77 is, however, far greater in area than the appeal site as it also comprises the adjacent field, land up to the railway line and land beyond the railway line up to the A27. Whilst I appreciate that the designation low/medium applies to the whole area and that Mr Duckett did not agree that different parts of the area could be separately defined as either low or medium, I note that in the Officer's Report to Committee it is stated that 'the landscape

¹⁰ The Concise Oxford Dictionary

¹¹ Paragraph 17 (5th bullet point) of the Framework

¹² Appendix 7 to Miss Toyne's proof

¹³ 2009-2011 Appendix C to Mr Duckett's proof

¹⁴ Paragraph 5.2.1 - Appendix C to Mr Duckett's proof

becomes increasingly sensitive to built development to the north and west as it becomes more related to the open farmland than the surrounding urban edge'. It seems to me on that basis that the appeal site is more related to the surrounding urban edge than the open farmland and that development on it would have a less detrimental effect on the landscape than development on other parts of Area 77.

25. Both Miss Toyne and Mr Duckett gave detailed evidence to the Inquiry and they both provided photographs of the appeal site with their proofs and Miss Toyne also provided photomontages and sketch perspectives which illustrated the proposal. Taking all of their evidence into account and also what I saw on the extensive site visit I have reached the following conclusions:
26. The current large gap between the A259 and the railway line between Southbourne and Hermitage would be reduced for part of the depth of the appeal site. This area of land cannot be seen from the A259 and the fleeting views offered to those using the road would not be significantly affected, if at all. Those properties in Southbourne that have views over the appeal site would have a different view, one of development in contrast with the current open field, but there is no reason for refusal relating to harm to neighbouring residential amenity and different does not necessarily equate with harm.
27. People who walk westwards along public right of way No.242 from Garsons Road would have a different experience in that, among other things, they would be walking for a greater distance through built development before they came to the open fields and the views towards the distant South Downs. Walkers on public right of way No.242 along the boundary with the appeal site would be aware of the development but open views across Gosden Green Field and towards the South Downs would remain. Views from other points in the vicinity, including those from public right of way No.241, would be less open and would include the proposal but I do not consider that those views would be significantly adversely affected given, among other things, the proposed woodland belt, the proposed hedgerows and landscaping, the width of Gosden Green Field and the remaining open land to the north of the appeal site.
28. There are fourteen points to the Land Management Guidelines for the Southbourne Coastal Plain. Several of these refer to the creation, maintenance and strengthening of hedgerows and encouraging tree planting and landscape enhancement around villages and their approaches¹⁵. Although the proposal is in outline, the illustrative masterplan shows a 10m wide native tree and shrub belt on the western boundary of the site, and a 5m wide belt of native tree and shrub planting on the north, east and south boundaries. This proposed planting could be imposed in general terms by a planning condition.
29. One of the Guidelines, on which the Council placed some emphasis, is 'restore and strengthen the landscape of the gaps between settlements' and I accept that the proposal would not wholly comply with this point, but the points are guidance only and whilst I also accept that the trees and shrubs would take some time to mature, and in that respect I place limited weight on the photomontages and sketch perspectives provided by Miss Toyne, I consider that the proposals would broadly support the Land Management Guidelines.

¹⁵ Appendix 7 to Miss Toyne's proof

30. The current sense of openness and separation would be reduced. But given a number of factors such as that the proposed built development would be well set back from the western edge of the appeal site because it would include various open features such as a community garden and allotments as well as the woodland belt as shown on the illustrative masterplan and that the development in Hermitage closest to Tuppenny Lane is sporadic and itself outside the settlement boundary, I do not consider that the reduction in the gap would be so great so as to result in the coalescence of Hermitage and Southbourne, or the perception of such coalescence.
31. The buildings closest to the western boundary would be the care home and the assisted living unit block. They would comprise a substantial built development in terms of mass, height and scale and would be prominent in views from the two public rights of way and the railway line, as well as from other view points in the area. The edges of settlement boundaries tend to have dispersed and smaller built development than is proposed but the design of the buildings is for future consideration and there is no reason, in my opinion, why the buildings could not be designed in a manner that would keep any adverse visual impact to a minimum. The buildings would, in any event, be some distance from the western boundary of the site and would be separated from Gosden Green Field by the woodland belt and the other open features.
32. The northern boundary of the appeal site is, to my mind, an arbitrary line drawn on the map to accommodate the proposal as it relates to no physical feature in the landscape. The land to the north of the appeal site beyond the settlement boundary up to the railway line would remain open but it would, as a result of the proposal, be easily accessible for any future development proposals. But this is speculation and, although the current proposal is not in accordance with criterion 17 of the FAD so far as the scale of the proposal is concerned, the Council did not take this point.

Agricultural land

33. The Framework advises that 'local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality'¹⁶. The appeal site comprises approximately 22% of Grade 1 agricultural land, 62% of Grade 2 and 14% of Grade 3a and both the Appellant and the Council agree that it is within the definition of best and most versatile agricultural land¹⁷.
34. The appeal site has an area of some 3.3 hectares and the Council accepts that its loss is not a determinative issue but considers that it is a material consideration that should be given some weight¹⁸. The Appellant makes the point that most of the land around Southbourne comprises best and most versatile agricultural land and that any further development directed to Southbourne would be likely to result in the loss of such land. In the circumstances I give little weight to the loss of best and most versatile agricultural land that would result from the proposal.

¹⁶ Paragraph 112 of the Framework

¹⁷ Paragraph 5.26 of Mr Murray-Cox's proof and paragraph 5.36 of Mr Harris' statement

¹⁸ Paragraphs 5.39 and 5.40 of Mr Harris' statement

Conclusions on the first issue

35. The proposal would result in the provision of much needed housing and accommodation for the elderly, including 12 age restricted cottages on site as affordable housing; the appeal site is in a location close to the services and facilities of Southbourne which has been identified as a 'settlement hub' in the Emerging Local Plan; and the proposal would not result in any unacceptable adverse impacts on neighbouring properties and residents. The landscape would, of course, be altered by the proposal; the gap between Hermitage and Southbourne would be reduced; and there would be some loss of best and most versatile agricultural land. But as I have found above, I do not consider that these impacts would result in any significant harm that would outweigh the benefits of the proposal which would provide open market and affordable housing for the elderly in an area where there is an undisputed need for housing of all types and for all levels of social strata.
36. I therefore conclude for the reasons given above, and taking all other matters into account that the proposed development is acceptable in this location having regard to the development plan, the National Planning Policy Framework and other material considerations.

The assisted living units

37. The Assisted Living Units (ALU) would be occupied by persons aged over 55 years old who had been assessed as needing 1.5 hours per week care as a minimum. It would be a requirement of the terms of occupation that occupiers had an assessment of their needs and that they would contract to pay for, and accept, the level of assessed care. In addition to personal care, care could include the supervision of medication and shopping¹⁹. Mr Appleton said that in practice people who lived in ALU were more likely to be aged 70-75 and that the amount of care would be substantially over 1.5 hours per week and that as the occupiers became frailer the amount of care provided would increase. However, Mr Appleton's evidence was not reflected in the occupancy restrictions in the s.106 agreement²⁰ or the suggested planning conditions.
38. The note from Montpelier explaining the nature of ALU was not site specific but Mr Murray-Cox understood that it would form the basis for the proposed scheme. Mr Appleton provided evidence on ALU in general. The information available as to the manner in which the ALU would be operated in practice was, in my opinion, vague, anecdotal and general rather than specific to the proposal. From the information that was available, it would appear that the ALU would be built to specific standards to allow for such things as wheelchair access and the provision of hoists if necessary. The ALU block would be next to the care home. Staff would be on call 24 hours a day and each unit would have an alarm system. Staff would carry out daily checks and would have a master-key to enter if there was no response to their knocking. The residents would be able to use the communal facilities at the care home and they could also have meals prepared for them and eat in the communal dining room if they wished or if they were unable to prepare meals for themselves. The ALU would have overnight rooms for staff and an overnight guest suite.

¹⁹ Paragraphs 2 and 3 of the Montpelier note - Document 8

²⁰ Clause 16 of the First Schedule - Document 2

39. Each unit would be self-contained. There would be 10 one bed units and 30 two bed units and only one person occupying the unit would have to be in receipt of care. Occupation of an ALU could involve a variety of tenures, such as ownership of a long lease or shared ownership; this would be in contrast with the care home where occupation would be by way of a licence. The ALU would not be registered for the provision of residential care under the relevant legislation because the care provided in the ALU would be domiciliary care which was described by Mr Appleton as the same as an elderly person would receive if he/she was living in his/her own home.
40. There are a large number of terms used to describe this type of provision including extra care housing, enhanced sheltered housing and assisted living and, as can be seen from the Appeal Decisions I have been referred to, the Use Class in which they fall depends on the facts and circumstances of each case.
41. Use Class C2²¹ is headed 'Residential institutions' and states 'Use for the provision of residential accommodation and care to people in need of care (other than a use with Class C3 (dwelling houses))'. Use Class C3 is headed 'Dwellinghouses' and states 'Use as a dwellinghouse (whether or not as a sole or main residence) by - (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents'.
42. Circular 03/2005²² advises that the characteristics of Class C2 uses are the provision of personal care and treatment and that the residents and staff do not form a single household. Circular 08/2010²³ interprets Class C3(b) as 'those living together as a single household and receiving care' and goes on to explain that 'a single household under Class C3(a) is formed by a family ... a carer and the person receiving care'²⁴ and Class C3(b) makes provision for supported housing schemes, such as those for people with disabilities or mental health problems²⁵. The Circular differentiates between Class C3(b) uses and small residential care homes where staff and residents will not probably live as a single household and thus fall within a Class C2 use²⁶.
43. The ALU in this case would be self-contained, in that they would afford the facilities required for day to day private domestic existence, which is generally a feature of premises described as a dwellinghouse²⁷; the resident, or residents, would form a single household; care would be provided on a domiciliary basis; the carer would not live in the ALU; the occupation of the ALU would not be by way of a licence; the requirement to be assessed and receive care seems to me to be no different from paying service charges, for such things as a resident porter, cleaning or other services provided in a block of flats; there may well be some connection between the care home and the ALU, such as the use of the facilities and possibly shared staff, but I do not consider that this would have any affect on the use of the ALU and in this respect I note that the residents of the age restricted cottages would also be able to use the facilities and could receive care in their homes. It also seems to me to be highly pertinent that the minimum requirement for residence in the

²¹ Part C of the Schedule to The Town and Country Planning (Use Classes) Order 1987 as amended

²² 'Changes of Use of Buildings and Land' - Document 13 paragraph 63

²³ 'Changes to Planning regulations for dwellinghouses and Houses in Multiple Occupation' - Document 14 Annex A

²⁴ Paragraph 3 of Annex A to Circular 08/2010

²⁵ Paragraph 4 of Annex A to Circular 08/2010

²⁶ Paragraph 5 of Annex A to Circular 08/2010

²⁷ Paragraph 8 of Annex A to Circular 08/2010

ALU would be that one person, of possibly two occupants, would be over 55 years old and would be assessed as needing only 1.5 hours per week care. This indicates to me that the ALU need not necessarily be provided to persons 'in need of care' as stated in Class C2.

44. As a matter of fact and degree in these particular circumstances and with the information available I find that the ALU fall within Class C3 of the Use Classes Order. I consider below whether it follows from this finding that a contribution to the area's affordable housing needs would be required.

The planning obligation

45. The Appellant, the Council, the County Council and the Owners of the appeal site have entered into a s.106 agreement which provides for planning obligations in respect of affordable housing; affordable housing commuted sum; community facilities contribution; sport and leisure contribution; medical facilities contribution; s.106 monitoring fee; interest; open space land, landscape buffers and landscape areas; SUDS; library contribution; total access demand contribution; fire and rescue service contribution and provision of fire hydrants; and public arts strategy contribution. There is also an obligation to include a covenant on the development to prevent dog ownership in order to mitigate any impact on the Chichester and Langstone Harbours SPA.
46. These obligations were made in accordance with saved Local Plan policies BE11, H4, H6 and H8; Supplementary Planning Guidance - The Provision of Service Infrastructure Related to New Development in Chichester District; Interim Statement of Planning for Affordable Housing; Interim Policy Statement on Development and Disturbance of Birds in Chichester and Langstone Harbours SPA; Interim Policy Statement on Planning for Affordable Housing; Chichester District Public Arts Strategy; and the Provision of Service Infrastructure Related to New Development in West Sussex - Part 1.
47. On the basis of these policies, documents and the information provided by, among others, the Council, the County Council, Natural England and NHS Sussex I consider that the contributions were properly requested and the amounts of those contributions were properly calculated.
48. With regard to the affordable housing commuted sum, payment of this sum was dependent on my finding that the ALU were within Class C3 and that the payment is necessary. Paragraph 4.59 of the SPG - The Provision of Service Infrastructure Related to New Development in Chichester District states 'Sheltered housing schemes targeted towards the frail elderly, which include provision for an element of care, albeit purchased privately by the residents are considered to provide a specialised form of affordable housing that is meeting a particular need within the community. Such schemes will not, therefore, be expected to provide affordable housing'. In a letter dated 13 March 2006 the Council was advised by the Government Office for the South East that 'In areas where there is an acknowledged need for affordable housing, as matter of principle, the Government therefore does not regard that development proposals for sheltered or extra care housing to be sold or let on the open market should be exempt from the need to provide an element of affordable housing'²⁸. However, the SPG, which was adopted in December 2004, was not amended to take the contents of the letter into account. The Emerging Local

²⁸ Appendix 10 to Mr Harris' statement

Plan states that 'Sheltered and extra-care housing will be expected to provide both market and affordable housing on-site in line with Policy 34'²⁹.

49. As mentioned above, whatever may be the case in practice, the minimum requirement for residence in the ALU is that one person, of possibly two occupants, is over 55 years old and needs 1.5 hours per week care. Such a person is not, in my opinion, 'frail elderly' as referred to in the SPG. Given that there would be 30 two bed units that could be occupied in this manner, I consider that the ALU cannot be described as being 'targeted towards the frail elderly'. These units would be available on the open market and, according to Mr Appleton, would be primarily for owner-occupiers who could no longer manage at home and who would sell their properties to enable them to move in. It therefore seems to me that the ALU are not likely to be 'affordable housing' in the terms stated in the SPG. It is therefore my opinion that the ALU would not be the type of housing to which the SPG was aimed and given the thrust of Emerging Local Plan policy, an affordable housing commuted sum would be necessary.
50. The Council and the Appellant agreed that all of the planning obligations included in the s.106 agreement met the tests contained in Regulation 122 of the Community Infrastructure Regulations 2010 and I have no reason to come to a different conclusion.
51. Because of the issue in respect of the affordable housing commuted sum the Council did not formally withdraw the third reason for refusal but said that if I found that the ALU were Class C3 and that payment of the commuted sum was necessary then that reason for refusal fell away. Given my findings above, the third reason for refusal does fall away, but for the sake of completeness I conclude that with the provision of the s.106 agreement there are appropriate arrangements to meet affordable housing and other infrastructure needs that would arise from the development.

Other Matters

52. Local residents made a number of representations, both written and orally to the Inquiry. These were generally in support of the Council's position, although I note that some representations were not against the principle of the development of the site, and also raised the question of the access being solely through Alfrey Close and the consequential effect on traffic along the Close, particularly during the construction period, and the hazards of the junction with Main Road.
53. West Sussex County Council, as highway authority, has no objection to the proposed access arrangements provided the junction between Alfrey Close and Main Road is constructed in accordance with site access drawing No.1283-HL001 Rev B. In addition, conditions have been suggested requiring further details of vehicular and pedestrian access to the site and the submission of a construction method statement which would address a number of matters including access to the site during the construction stage. In the circumstances, I have no reason to come to a different conclusion from the highway authority and the Council that the access proposal would be acceptable.

²⁹ Paragraph 17.9 page 159 of the Chichester Local Plan: Key Policies Pre-Submission

54. During the course of the Inquiry I was referred to a considerable number of Appeal Decisions by both the Appellant and the Council in connection with such matters as the weight to give to the Emerging Local Plan and the FAD, the importance of a strategic gap and the consideration of Use Class C2 and Use Class C3. Each of these decisions was decided on a number of matters including its own facts, location, development plan and proposal most of which were different in this appeal. I have, however, taken the principles of these decisions into account insofar as they are relevant to the issues in this appeal.

Conditions

55. Prior to the Inquiry, the Parties produced an agreed schedule of suggested conditions³⁰ which was discussed at the Inquiry together with suggested amendments and additional conditions submitted by the Appellant³¹. I have amended the wording in some of them to reflect the discussion and to accord with the advice in Circular 11/95³².
56. Conditions on reserved matters are required in an application for outline permission. In addition to reserved matters, given the circumstances of this appeal, conditions to secure, in general terms, the design, layout and landscaping, as illustrated are necessary to ensure that the development relates to the landscape as provided for in the application. Landscaping is, however, a reserved matter and details would be more appropriate at a later stage, conditions are therefore not necessary in this approval. Conditions relating to the height of the buildings and their external materials are necessary to ensure the visual quality of the development.
57. Conditions relating to the phasing of works, a method of construction and construction hours would minimise disruption during construction. There is no planning necessity for a condition relating to the occupation of the ALU and the construction of the Care Home being connected. Conditions for parking and the provision of a travel plan would encourage sustainable transport practice. The public footpath across the site is well used and a condition requiring its improvement is necessary to ensure its continued use.
58. Conditions for biodiversity, surface water drainage, contamination, a lighting scheme and climate change are necessary to minimise the risk of flooding and to protect the environment. The site has potential archaeological interest and this should be investigated.
59. In order to protect future residents a noise attenuation scheme is required. Given the nature of the development, age restriction conditions are necessary for the ALU and the separate dwellings. A condition setting out the use class of the care home is also necessary so as to accord with the proposal as is a condition requiring all aspects of the development to be wheelchair accessible.

Conclusions

60. The development plan is out-of-date and silent in respect of matters relevant in this appeal and the proposal would have no adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal. In addition, an agreement has been entered into which results in arrangements

³⁰ Document 11

³¹ Document 12

³² The Use of Conditions in Planning Permissions

being made to meet affordable housing and other infrastructure needs that would arise from the development. Therefore, for the reasons given above, and taking all other matters into account, I conclude that the appeal should be allowed.

Gloria McFarlane

Inspector

Schedule of Conditions

- 1) Details of appearance, landscaping, layout, access within the site, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority prior to the commencement of that part of the development 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 before the expiration of three years from the date of this permission. The development hereby permitted shall begin before the expiration of one year from the date of approval of the last of the reserved matters to be approved.
- 3) The plans and particulars required under condition 1 of this permission shall be generally in accordance with the submitted illustrative Master Plan 3615-PL-04 Rev M, in particular the 10m wide woodland gap on the western boundary and the 5m gaps on the south and east boundaries and the hedges and trees on the north boundary.
- 4) The plans and particulars required in condition 1 of this permission shall generally be in accordance with the principles of the Design and Access Statement (chapter 4) and the Design and Appearance Documents (chapter 6).
- 5) No development shall commence unless and until a scheme of phasing setting out the sequence in which the proposed buildings, car parking, internal vehicular and pedestrian access routes, SUDS infrastructure, landscaping, landscape buffers and public and other open space will be provided has been submitted to and approved by the local planning authority. Once agreed, the development shall not be carried out other than in accordance with the agreed phasing scheme unless otherwise agreed in writing by the local planning authority.
- 6) No development shall commence until further details of vehicular and pedestrian access to the site, in the position shown on drawing 1283-HL001 Rev B, have been submitted to and approved in writing by the local planning authority. The details shall be based on the recommendations of a Stage 1 Safety Audit and the approved works shall be carried out prior to commencement of the development.
- 7) Before any phase agreed pursuant to condition 5 of this permission is occupied, car parking and cycle storage provision for that phase shall be provided in accordance with details to be submitted to and approved by the

local planning authority and such provision shall thereafter be maintained for the stated purpose in perpetuity.

- 8) No part of the development shall be occupied until a Travel Plan, including a timetable for implementation and periodic review, has been submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.
- 9) No development shall proceed unless and until detailed plans of a proposed scheme of improvement works shown indicatively on plan 3615-PL-04 rev M, which include the surfacing, seating and signage of the public footpath running through the site, have been submitted to and approved by the local planning authority. The development shall not be occupied unless and until the approved scheme has been carried out in its entirety.
- 10) Before any phase agreed pursuant to condition 5 of this permission is commenced, samples and details of materials and finishes to be used for external walls, roofs, windows and doors within that phase shall first be submitted to and approved in writing by the local planning authority. The development of each phase shall thereafter be carried out in accordance with the approved details.
- 11) The maximum height of the buildings shall not exceed 11m in respect of the Care Home and 9.5m in respect of both the Assisted Living Units and the Age Restricted Dwellings.
- 12) No development shall commence unless and until details of:
 - i) a scheme of measures to mitigate the impact of the development on bats both during and after construction have been submitted to and approved by the local planning authority; and
 - ii) a full mitigation strategy in respect of slow worms, including translocation to a receptor area within the site, have been submitted to and approved by the local planning authority.The development shall not be carried out other than in accordance with the approved details.
- 13) The development hereby permitted shall in all respects meet the requirements of the Council's Interim Statement on Planning and Climate Change. The Reserved Matters to comply with condition 1 of this permission shall include details, specifications, proposals and any necessary evidence to demonstrate how the proposals comply with these requirements. The approved development shall be implemented in accordance with the approved details and retained in perpetuity.
- 14) Before the development hereby permitted is begun, a surface water drainage scheme for the site based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development together with a timetable for its implementation in full shall be submitted to and be approved in writing by the local planning authority. The development shall thereafter not be carried out other than in accordance with the approved details.

- 15) No development shall take place until a desk-top study to identify and evaluate all potential sources and impacts of land and/or groundwater contamination, including the potential for any landfill gas to reach the site, has been carried out in accordance with a methodology that has first been submitted to and approved in writing by the local planning authority. The written results shall be submitted to the local planning authority on completion of the study.
- 16) In the event that the desk-top contamination study identifies the need for site investigations and/or remedial measures, no development shall take place until the site investigations have been carried out, in accordance with a methodology that has first been submitted to and approved in writing by the local planning authority, and a report documenting the results and specifying any necessary measures to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority.
- 17) The site shall be remediated in accordance with the approved measures before development begins. Should any contamination be encountered that has not previously been identified, details of it and of measures to address it shall be submitted to and approved in writing by the local planning authority and the measures shall be carried out as approved. A verification report confirming that all remediation has been carried out as approved shall be submitted for the local planning authority's written approval on completion of the remediation works and before any element of the development is occupied.
- 18) No development shall take place until a programme of archaeological work, to include the recording of findings and subsequent publication of results, has been carried out in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority.
- 19) No development in respect of any phase agreed pursuant to condition 5 of this permission shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall, in respect of that phase, provide for:
- i) vehicle parking for site operatives and visitors, and on-site turning space;
 - ii) loading and unloading of plant and materials;
 - iii) storage of construction plant and materials;
 - iv) erection and maintenance of security hoarding, including decorative displays and facilities for public viewing as appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) the location of any site huts/cabins/offices; and
 - viii) the method of access and routing of vehicles during construction including measures to ensure that vehicles used by site operative, contractors or visitors to the site in association with the construction of any phase of the development are not required to queue or park along the length of Alfrey Close prior to accessing the site.

Notwithstanding the construction hours referred to in condition 20 of this permission no vehicles used by site operatives, contractors or visitors to the

site in association with the construction of any phase of the development shall be permitted to access the site prior to 0700 Mondays to Fridays and 0800 on Saturdays.

The Statement as approved shall be adhered to at all times throughout the construction period.

- 20) 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 0700 hours and 1800 hours Mondays to Fridays and 0800 hours and 1300 hours on Saturdays and there shall be no access to the site outside of these permitted hours by any vehicle associated with the construction of any phase of the development.
- 21) The application for the approval of reserved matters submitted to the local planning authority shall be accompanied by a lighting scheme for street lights and external estate lighting; this scheme shall include the type and specification of the equipment to be installed, its energy consumption, energy saving measures (automatic switch-off) and the predicted light emissions thereof. The predicted light emissions shall not exceed the ambient night levels in the immediate locality.
- 22) Before any phase agreed pursuant to condition 5 of this permission is commenced a scheme to protect the residents of that phase from noise associated with the railway line to the north of the site and from plant and machinery installed in connection with the Care Home and Assisted Living Units shall be submitted to and approved by the local planning authority. The development shall thereafter not be carried out other than in accordance with the approved details.
- 23) The Assisted Living Units hereby permitted shall not be used other than for purposes within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order. Furthermore, the said accommodation shall not be occupied other than by persons who have attained the age of 55 years or the spouse or partner of such persons including a widow or widower. The age restriction shall not apply in respect of accommodation occupied by a warden/staff or by persons using any guest accommodation within the Assisted Living Unit block.
- 24) The Age Restricted Dwellings hereby permitted shall not be occupied other than by persons who have attained the age of 55 years or the spouse or partner of such persons including a widow or widower.
- 25) The Care Home hereby permitted shall not be used other than for purposes within Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.
- 26) All aspects of the development, including the Care Home, the Assisted Living Units, the Age Restricted Cottages and external areas, shall be designed to be wheelchair accessible and thereafter constructed in accordance with the approved details and such measures shall be retained in perpetuity.

APPEARANCES

FOR THE APPELLANT

Mr T Hill	Queen's Counsel, instructed by Barton Willmore LLP
He called	
Mr N Appleton	Consultant - Health, housing and social care
Miss L Toyne	Landscape Architect
BA(Hons) DipLA MLI DipTP CMLI	
Mr D Murray-Cox	Chartered Town Planner
BA(Hons) MPlan MRTPI	

FOR THE LOCAL PLANNING AUTHORITY

Mr G Lewis	Counsel, instructed by Chichester District Council
He called	
Mr R Davidson	Principal Planning Officer - Planning Policy Team
BA MA MRTPI	
Miss L Grange	Housing Delivery Manager
BSc CIH	
Mr B Duckett	Landscape Architect
BSc(Hons) BPhil CMLI	
Mr S Harris	Senior Planning Officer - Development Management
BSc(Hons) DipTP MRTPI	Service

INTERESTED PERSONS

Mr & Mrs Hunt	Local residents
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DOCUMENTS SUBMITTED AT THE INQUIRY

Document 1 - The Council's notification letter and list of persons notified
Document 2 - S.106 Agreement dated 6 February 2014
Document 3 - Appeal decision APP/R0335/A/12/2189707, delegated report, site plan, west elevation, aerial photograph and concept landscape plan
Document 4 - Extract from WSCC Landscape Architect Response to the application
Document 5 - Extracts from the Local Plan proposals map
Document 6 - Four sheets of Miss Toyne's photographs of the site
Document 7 - Planning approval ref SY/06/04237/FUL and Officer's Report
Document 8 - Note from Montpelier Estates
Document 9 - Definitions of older persons' accommodation
Document 10 - Explanation of terms commonly used in relation to specialist accommodation [for] older people
Document 11 - Agreed schedule of suggested conditions
Document 12 - The Appellant's additional suggested conditions
Document 13 - Extract from Circular 03/2005
Document 14 - Circular 08/2010

DOCUMENTS SUBMITTED BY THE ADVOCATES AT THE INQUIRY

Document A - Opening submissions of the Council
Document B - Closing submissions of the Council
Document C - Closing submissions on behalf of the Appellant