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## Appeal Decision

Hearing held on 15 September 2016

Site visit made on 14 September 2016

**by Cullum J A Parker BA(Hons) MA MRTPI IHBC**

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

**Decision date: 28 September 2016**

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**Appeal Ref: APP/C3810/W/16/3147195**

**Land south of The Littlehampton Academy, Littlehampton, West Sussex, BN17 6DQ**

- 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 West Sussex County Council against the decision of Arun District Council.
  - The application Ref LU/55/15/OUT, dated 18 February 2015, was refused by notice dated 29 September 2015.
  - The development proposed is described as '*outline application for 68 residential units*'.
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### Decision

1. The appeal is allowed and outline planning permission is granted for 68 residential units at Land South of The Littlehampton Academy, Littlehampton, West Sussex, BN17 6DQ in accordance with the terms of the application, Ref LU/55/15/OUT, dated 18 February 2015, subject to the conditions set out in Appendix A.

### Application for costs

2. At the Hearing an application for costs was made by the agent on behalf of West Sussex County Council (the appellant) against Arun District Council. This application is the subject of a separate Decision.

### Background and Main Issue

3. The appeal is submitted in outline, with appearance, landscaping, layout and scale reserved for future consideration by the local planning authority (LPA). I have proceeded on the basis that these matters are reserved, with the submitted drawings providing no more than a broad indication of how the site might be developed in respect of these matters.
4. Since the appeal was submitted, the LPA has confirmed that it is no longer 'contesting' the appeal as the appellant is willing to offer financial contributions towards infrastructure and affordable housing, through the provision of a legal agreement. Nonetheless, as the appeal has not been withdrawn, I consider the main issue is:
  - Whether the proposed development would make adequate provision in respect of local infrastructure with specific regard to development plan policies which seek affordable housing, public open space, libraries, health, education, sports and leisure facilities, and fire service contributions.

## Reasons

5. I made an unaccompanied site inspection on Wednesday 14 September, and the main parties did not ask for me to visit the site with them at the Hearing. The appeal site is located to the south of The Littlehampton Academy, and within close proximity to residential areas. The site formerly contained buildings associated with the nearby academy. To the south is an area of public open space, with play equipment.
6. The site is 'allocated' within the *Littlehampton Neighbourhood Plan 2015* (NP) for housing development. Neither party raises an issue with the principle of the site's development for housing. What is more, the scheme is submitted in outline which means that the LPA is able to consider matters such as landscaping and design, for example, at a later stage. Suffice to say that at this stage, the LPA raises no 'in principle' concerns in respect of character and appearance issues. With no cogent or detailed evidence to the contrary, I see no reason not to concur with the main parties on these points.

## Planning Obligations

7. The appellant has completed a signed and dated (18 August 2016) unilateral undertaking, or 'legal agreement' under Section 106 of the TCPA 1990, which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of *The Community Infrastructure Levy (CIL) Regulations 2010* and Paragraph 204 of the *National Planning Policy Framework* (the Framework) which set out the three tests for seeking planning obligations: in that they must be '*necessary to make the development acceptable in planning terms, directly relate to the development, and fairly and reasonably related in scale and kind to the development.*' The LPA does not have a CIL Charging schedule in place, but Policy GEN 8 of the LP sets out that the Council will seek contributions towards infrastructure.

## Affordable Housing

8. Policy DEV17 of the *Arun District Local Plan 2003* (LP) does not set out a specific figure but indicates that the '*appropriate level and type of provision will be dependent upon identified local housing need...*' The supporting text to the Policy indicates that '*as a starting point, a figure of 30% affordable housing will generally be sought.*' However, rather than an expression of a specific planning policy, the 30% is an aid to negotiations between the parties. Originally the appellant considered that the site was unable to provide on-site affordable housing and continued to maintain this stance in terms of viability<sup>1</sup>. At the time of the Hearing the appellant submitted a unilateral undertaking securing 20% of the proposed housing as affordable; translating into four 2 bedroom apartments, one 2 bedroom house, and six 3 bedroom houses as 'affordable rent', and three 2 bedroom houses as shared ownership, as detailed in the agreed Statement of Common Ground dated the 6 and 7 of September 2016 respectively.
9. In this case, the appellant has submitted viability evidence, which the Council accepts would enable the proposal to provide 20% affordable homes, together with the 80% market housing, in an area that cannot currently demonstrate a

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<sup>1</sup> Documents submitted at the Hearing, No 2

five year supply of deliverable housing sites. What is more, the appeal site is allocated for housing development within a recently 'made' Neighbourhood Plan. Whilst I acknowledge Littlehampton Town Council's position in seeking the 30% 'full quota' of affordable housing as they see it, in achieving the 20% proposed in this case, the appellant would be meeting the needs of both affordable and market housing and deliver the anticipated significant boost in housing supply envisaged by Paragraph 47 of the Framework.

10. The amount of affordable housing due has been calculated on the land value and build cost of the specific site at the time development is likely to occur. In these circumstances, I consider that this obligation would be fairly and reasonably related to the development proposed would pass the statutory tests. In this respect, the provision of 20% affordable housing, secured by legal agreement is a significant and positive benefit in favour of the proposal and would meet relevant planning policies and the 'tests' set out in the CIL Regulations.

#### *Public Open Space and Sports & Leisure*

11. The site itself should provide about 4,000 sqm of open space, which the LPA considers is both possible and would fulfil the needs of future occupiers. The submitted legal agreement also sets out the provision of £68'000 for a children's play area for the purpose of buying play equipment for Rosemead Park, which is located just to the south of the development. With regard to sports and leisure facilities, the LPA have identified that there are local deficiencies in the provision of swimming pool, artificial pitches and sports halls.
12. The provision of 68 dwellings would add further additional pressures to existing facilities and add to any existing demand for new facilities. Whilst I saw that the Inspire Leisure Centre (referred to the Littlehampton Sports Centre in the legal agreement) is located some distance to the south of the appeal site, it is not uncommon for leisure facilities to be located a short distance away in a central location, and such a relatively short distance is unlikely to be a significant deterrent to future occupiers utilising such facilities. As such, this obligation would be fairly and reasonably related to the development proposed would pass the statutory tests.

#### *Library stock*

13. West Sussex County Council (WSCC), in its role as the provider of library services within the area, has set out that without a clear indication of the type of houses being proposed a formula would need to be applied to any final scheme in order to determine the likely pressures on library services arising from the development. Such a method appears practical and reflective of the outline nature of the proposal and the demands it is likely to place on local library services. I therefore consider that this obligation would pass the statutory tests.

#### *Education*

14. Similarly, in terms of primary, secondary and sixth-form education, the uncertainty over the type of housing stock which the scheme might deliver means a formula would be applied. Again, this is a pragmatic way to deal with such matters in this case. What is more, the evidence before me suggests that

such monies would be used for a new or expanded Littlehampton area primary school and the Littlehampton Academy (for secondary and sixth form provision). Both would relate to the development proposed and assist in dealing with the demand arising from the dwellings and their occupants. This obligation would pass the statutory tests.

#### *Health*

15. The NHS contributions of £54,796 are sought towards either East Street Surgery or Park Surgery, which are both located a short distance to the south of the appeal site, or a new medical facility within the town of Littlehampton. Such uses for the obligation are confirmed by the NHS Coastal West Sussex Clinical Commission Group. Given that the proposal would increase the population within the locality, and occupiers are likely to seek GP services in an area where there is a shortfall, I find that the obligations sought in this respect would meet the provisions of the three statutory tests.

#### *Fire and rescue services*

16. In their justification paper, WSCC indicate that the obligation sought for the Fire and Rescue Service Contribution would be for the *provision of smoke alarms for vulnerable residents in Littlehampton*. I am not aware of the policy basis for this contribution, or how it is directly related to the proposed development. I am therefore unable to conclude with any confidence that this obligation would pass tests (a), (b) or (c) in CIL Regulation 122.
17. Conversely, the obligation sought for fire hydrants within the vicinity of the housing development would serve those dwellings were they required by the local fire service. As such, I find that such an obligation would pass the statutory tests.

#### **Conclusion on planning obligations**

18. It has been confirmed that, in all the above instances considered, the sums sought do not exceed five planning obligations, as required by the restrictions on 'pooling' contributions introduced by the CIL Regulations. With no evidence to the contrary, I see no reason to take a contrary view.
19. In light of these findings, since the obligation relating to the Fire and Rescue Service Contribution fails to meet one or more of the tests set out in CIL Regulation 122, I am unable to take it into account in determining the appeal.
20. All the obligations, except for those relating to the Fire and Rescue Service Contribution, in this case are necessary, directly related, and fairly and reasonably related to the development. Therefore, they meet all the tests within the CIL Regulations 122 and 123, and should be taken into account in this decision. I therefore give significant weight to the obligations for affordable housing and modest weight to those securing public open space and sports & leisure, library stock, education, health and fire hydrants infrastructure. They would also comply with the provision of Policies GEN8 and DEV17 of the LP and Policy 4 of the NP, the aims of which I have aforesaid. What is more, the provision of affordable housing is an important public benefit which weighs in favour of the grant of permission.
21. I acknowledge that at the current time, the LPA concedes that it is unable to demonstrate a five year supply of deliverable housing sites. However, as I

have found the proposal to be acceptable in respect of the local policy context, and also the national policy framework and guidance, there is no need for me to consider this matter further, as the proposal would be broadly policy compliant and there are no material considerations that indicate otherwise.

### **Conditions**

22. A number of conditions have been suggested by the LPA. I have considered these in the context of Paragraph 206 of the Framework and the Planning Practice Guidance and the use of planning conditions.
23. Conditions requiring the submission of reserved matters, for development to be carried out in accordance with the submitted drawings and details of materials to be submitted are reasonable in order to protect the character and appearance of the area and ensure high quality design.
24. The submission of details for surface water drainage, Sustainable Urban Drainage Systems (SUDs), and foul drainage are reasonable and necessary in order to prevent localised flooding or pollution from the development.
25. The provision of ecological enhancements by condition, including, but not limited to, items such as bat boxes, is reasonable and necessary in order to provide an enhancement to local biodiversity and the local environment. For similar reasons, the submission and implementation of a landscaping management plan could ensure that the open space to be provided is managed for the benefit of existing and future local residents.
26. The provision of a construction management plan is reasonable to ensure that such activities do not unreasonably disturb nearby residents. However, for precision, this should also include hours of operation rather than a separate condition.
27. Conditions requiring the provision and retention of both cycle and vehicle parking spaces and that the internal dimensions of garages should be no smaller than 6 metres by 3 metres, so as to potentially accommodate a vehicle are reasonable in order to promote sustainable modes of transport and reduce the demand for on-street parking spaces.
28. In terms of conditions relating to access onto Fitzalan Link Road and Elm Grove Road, these are reasonable and necessary for the avoidance of doubt and in order to ensure adequate and safe access into and from the appeal site.
29. I therefore find that the conditions considered above, which do meet the tests, should be imposed albeit with some minor alteration to wording.

### **Conclusion**

30. For the reasons given above, and having taken into account all matters raised, I conclude that the appeal should be allowed.

*Cullum J A Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Bob Hull, DipTp, MRTPI  
Simon Corp  
Sally Adams  
Tony Williams

Agent  
Viability Consultant  
WSCC  
VOA

### **FOR THE LOCAL PLANNING AUTHORITY:**

Neil Crowther  
Andrew Elder  
Ted Reddick  
Peter Griffiths

Arun District Council  
Arun District Council  
Viability Consultant  
Viability Consultant

## **DOCUMENTS SUBMITTED AT HEARING:**

The documents submitted at the Hearing related to application for costs made by the appellant, which is the subject of a separate costs decision. I have listed them here for the avoidance of doubt and in the interest of transparency.

1. LPA's response to Appellants application for costs
2. As above, but with Appellant's comment on points raised in red
3. Schedule of various dates and excerpts of emails between the parties, submitted by the Appellant

## Appendix A – List of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 4777/PL/001 A, 13/1693/002 A, 13/1693/003, 13/1693/004 and 4777-PL-002 Revision N.
- 4) Prior to the commencement of construction works a schedule of materials and finishes to be used for external walls and roofs of the proposed buildings have been submitted to and approved by the local planning authority. A 'statement of detail' shall be submitted setting out details of proposed windows and doors, details of the depth of recess/reveal from the brickwork, sills and lintels, brick bonding, brick detailing, eaves detailing and rainwater goods. The materials and 'statement of details' so approved shall be used in the construction of the buildings.
- 5) Prior to the commencement of construction works, full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the local planning authority.

The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, the recommendations of the SUDS Manual produced by CIRIA, or by other such similar documents.

Winter groundwater monitoring to establish highest annual ground water levels and percolation testing to BRE 365, or similar approved, should be submitted in order to support the design of any infiltration drainage, unless monitoring identifies that such work is not necessary.

No building shall be occupied until the complete surface water drainage system serving the development has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order thereafter.

- 6) Prior to the commencement of construction works on each phase of the development, full details of the maintenance and management of a Sustainable Urban Drainage System (SUDs) shall be set out in a site-specific maintenance manual and submitted to and approved in writing, by the local planning authority. The manual should include details of financial management and arrangements for the replacement of major components at the end of the manufacturers recommended design life. Upon completed construction of the SuDs system, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
- 7) Prior to the commencement of construction works details of a proposed foul drainage system shall be submitted to and approved in writing by the local planning authority (including details of its siting, design and subsequent management/maintenance, if appropriate) and no dwelling

shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.

- 8) Prior to the commencement of construction works on each phase of the development of any preparatory works a detailed ecological enhancement scheme (which could include features such as the installation of bat or bird boxes throughout the site or other ecological and biodiversity enhancements) shall be submitted to the local planning authority for approval and will be based on the recommendations within the supporting ecological statement and as appropriate. All approved details shall be implemented in full and in accordance with the agreed timings and details.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) delivery, demolition and construction working hours, which shall not exceed 07:00 to 18:00 Mondays to Fridays, 08:00 to 12:00 on Saturdays and not at any times on Sunday, Public or Bank Holidays.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 10) The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned garden areas. The landscape management plan shall be implemented in accordance with the approved details.
- 11) No residential development shall take place until details of laying out, timetable for provision and future maintenance of areas of Public Open Space within the appeal site has been submitted to and approved by the local planning authority. The layout details submitted in compliance with Condition 1 shall define the boundaries of such areas, their proposed use, the items of equipment, means of enclosure and all other structures to be installed. The development shall be carried out in accordance with the approved details.
- 12) No part of the development shall be occupied until covered and secure cycle parking spaces have been provided in accordance with plans and



details submitted to and approved by the local planning authority. These spaces shall thereafter be retained at all times for the storage of cycles.

- 13) No part of the development shall be occupied until the car parking spaces have been constructed in accordance with plans and details submitted to and approved in writing by the local planning authority. These spaces shall thereafter be retained and made available for the parking of vehicles at all times.
- 14) No dwelling shall be first occupied until such time as the vehicular access onto the Fitzalan Link Road has been constructed in accordance with the details indicatively shown on drawing 4777-PL-002 Revision N.
- 15) The existing access onto Elm Grove Road shall be retained to provide access for pedestrians, cyclists and emergency vehicles only.
- 16) Any garages provided on the site, shall measure a minimum of 6 metres by 3 metres internally, and should be made available and retained for the parking of vehicles after their construction.

Richborough Estates