



---

## Appeal Decision

Site visit made on 20 February 2018

**by AJ Steen BA (Hons) DipTP MRTPI**

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

**Decision date: 5 April 2018**

---

**Appeal Ref: APP/C3810/W/17/3185128**

**Land west of Brook Lane and south of A259, Angmering, West Sussex  
BN16 3JL**

- 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 Store Property Investments Limited against the decision of Arun District Council.
  - The application Ref A/44/17/OUT, dated 1 March 2017, was refused by notice dated 29 August 2017.
  - The development proposed is the demolition of existing buildings on site and the erection of a mixed use development comprising residential units and care home (Use Class C2 and C3) and ancillary facilities including railway crossing together with associated access, car parking and landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings on site and the erection of a mixed use development comprising residential units and care home (Use Class C2 and C3) and ancillary facilities including railway crossing together with associated access, car parking and landscaping at land west of Brook Lane and south of A259, Angmering, West Sussex BN16 3JL in accordance with the terms of the application, Ref A/44/17/OUT, dated 1 March 2017, subject to the conditions in the schedule at the end of this decision.

### Preliminary Matters

2. The application was submitted in outline with all matters reserved. I have dealt with the appeal on that basis, treating the site layout plans and the street scene drawing as illustrative. The access, appearance, layout, scale and landscaping (the reserved matters) are reserved for consideration at a later stage.
3. Since determination of the planning application subject of this appeal, the Council have approved an outline planning application with all matters reserved under reference A/169/17/OUT for an alternative development to the appeal scheme on the same site. The development in that application was described as demolition of existing buildings on site and erection of a mixed use development comprising up to 90 no. residential units, a care home (Use Class C2 & C3) and ancillary facilities including railway crossing, together with associated access, car parking and landscaping. I understand this included further information concerning access to public transport, the provision of land

for a bus stop within the site, details of the perimeter boundary treatment and securing provision of a pedestrian link to Manor Retail Park should the intervening development under planning permissions A/23/15/OUT and A/11/17/OUT fail to come forward.

4. I note that the draft Arun District Local Plan (emerging ADLP) has been submitted for examination and the examination report is anticipated shortly. However, it is not clear what are the extent of outstanding objections or whether the policies concerned will be considered as consistent with the National Planning Policy Framework (the Framework). Consequently, I am only able to give it limited weight in my decision.
5. Parts of the appeal site are located within Angmering Parish and Littlehampton Town, with the railway bridge providing direct access into Rustington Parish. As a result, any development would be subject to policies within the made Angmering Neighbourhood Plan (ANP), Littlehampton Neighbourhood Plan (LNP) and Rustington Neighbourhood Plan (RNP). The Council state that the proposed development would not conflict with any policies within the RNP.
6. The Council have confirmed that there is less than a two year supply of deliverable housing sites within the district and have drawn my attention to the implications of that on the weight to be attached to development plan policies. I will return to this matter in the planning balance at the end of my decision.

### **Main Issues**

7. Whether the proposal would provide suitable access to public transport provision and whether prospective occupiers would enjoy safe living conditions with regard to the proximity to the railway line.

### **Reasons**

#### *Public transport*

8. The appeal site is located between the railway line and main A259, separated from a retail park that is also located between the railway and A259 by open land. That open land is subject of planning permissions A/23/15/OUT and A/11/17/OUT for further retail development. To the opposite side of the railway line is the urban area that would be linked by a new pedestrian bridge over the railway to replace the existing pedestrian level crossing. Vehicles would directly access the A259 from the development. As a result, the site would be well connected to the urban area.
9. Buses are available from within the urban area on the corner of Worthing Road and North Lane over the railway and at the retail park. The site would be linked via the railway bridge and public footpath to the bus stop within the urban area. This is some distance from the site along a footpath shared with vehicular access to allotments, but the nature of the path and limited use by vehicles is such that conflict between vehicles and pedestrians would not lead to harm to the safety of pedestrians.
10. A unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 has been submitted in support of the appeal. Section 7 of Schedule 2 would provide a pedestrian link to the retail park should those other developments not be complete within three years of development commencing. As such, access would be provided to the bus stops at the retail park. This

obligation within the unilateral undertaking would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. As such, it would comply with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

11. Whilst I accept that the closest bus stops are some distance from the site, they would be accessible and, taking all these matters into account, there would be suitable access to public transport from the proposed development.
12. For these reasons, I conclude that the proposed access to public transport in this case is satisfactory. As such, the proposed development would comply with Policy GEN7(iii) of the ADLP and the Framework that seek development to reduce the need to travel, particularly by private car.

#### *Proximity to railway line*

13. The site is directly adjacent to the railway line. Further residential development is located on the other side of the railway. Information would be provided at reserved matters stage regarding the layout and landscaping of the development, including boundary treatment. These details would demonstrate how the occupants of the proposed development would be kept safe taking account of the proximity to the railway.
14. For these reasons, I conclude that occupants of the proposed dwellings would be safe taking account of the proximity to the railway line. As such, the proposed development would comply with Policy GEN7(v) of the ADLP that requires development to provide for the safe movement of pedestrians and vehicles.

#### *Other matters*

15. The unilateral undertaking was amended during the course of the appeal and the Council were given the opportunity to comment on the final version. This provides for a number of financial contributions toward affordable housing, NHS services, footpath improvement, fire and rescue, education and library provision. In addition, it provides planning obligations for the provision of access to public transport (referred to above), open space including a local area of play and a local equipped area of play, the care home and pitches for accommodation by travellers.
16. The existing site contains space with planning permission for pitches for the accommodation of gypsies and travellers. This is limited by condition to certain individuals, so would not be available for occupation by others. However, it is clear that they were allowed on the basis that they were occupied by gypsies or travellers. Consequently, the permission would, if it were not for the provision within the unilateral undertaking, result in the loss of gypsy and traveller accommodation. In the report to the Council's Planning Committee on the application, officers concluded that it would not be possible to prove that there is a need for this gypsy or traveller site. Without any proof of a need for such accommodation, it has not been demonstrated that it is necessary to make the development acceptable in planning terms. As such, this provision would not comply with Regulation 122 of the CIL regulations and I have not taken it into account in my decision.

17. A need for a care home within the area has been demonstrated by the prospective occupier and its provision would be a benefit to the proposed scheme. The unilateral undertaking provides a mechanism for the delivery of the care home, with construction of the care home to start prior to occupation of the fiftieth dwelling. Although the appellant has queried whether this would comply with the CIL regulations, no alternative mechanism has been put forward. As such, I consider that this obligation is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Consequently, this provision would comply with Regulation 122 of the CIL regulations.
18. The unilateral undertaking would ensure provision of 30% of dwellings on the site to be affordable and provides a mechanism to determine the mix and provision of these dwellings. The Council has confirmed that this would meet their requirements and Regulation 122 of the CIL regulations. I see no reason to disagree.
19. A contribution toward fire and rescue is included within the unilateral undertaking that would contribute toward the cost of community fire link smoke detectors in the homes of vulnerable persons. During consideration of the later application, reference A/169/17/OUT, the Council concluded that this contribution would not be directly related to the development or necessary to make the development acceptable in planning terms. I agree with their conclusion and do not consider the fire and rescue contribution would meet Regulation 122 of the CIL regulations. Consequently, I have not taken it into account in my decision.
20. The financial contributions toward other elements are not in dispute between the parties. These relate to contributions toward the provision of services and facilities that would meet the needs of occupants of the development. The financial contributions would meet the requirements of Regulation 122 of the CIL Regulations. Regulation 123(3) of the CIL Regulations restricts the use of pooled contributions toward items that may be funded via CIL. If five or more obligations for a project or type of infrastructure have been entered into since 6 April 2010 and it is a type of infrastructure that is capable of being funded by CIL, no more contributions may be collected toward that project. I understand that they would not result in more than five contributions to those services and facilities in accordance with Regulation 123(3) of the CIL Regulations.
21. Access to the proposed development is not to be determined at this stage, but the illustrative details suggest that it would be in the location of the existing access from the A259 dual carriageway. This is a busy road, but there is no evidence to suggest that adequate access could not be provided in this location or that the additional traffic relating to this development would lead to harm to highway safety.
22. A Flood Risk Assessment (FRA) was submitted with the application and parts of the site are located with Flood Zones 1, 2 and 3. The indicative layout suggests that buildings would be located within Flood Zone 1. The Council has concluded that the sequential and exception tests have been met and I see no reason to disagree with their conclusions in this regard.

### *Planning balance*

23. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date where the Council cannot demonstrate a five year supply of deliverable housing sites. The Written Ministerial Statement (WMS) of 12 December 2016 states that recently made neighbourhood plans would be up to date if the Council were able to demonstrate a three year supply of deliverable housing sites. The Framework and WMS are material considerations of very great weight in the consideration of this appeal.
24. In this case, the Council have confirmed that there is less than a two year supply of deliverable housing sites within the district and, as such, relevant policies for the supply of housing should not be considered up to date in accordance with paragraph 49 of the Framework and the WMS.
25. My attention has been drawn to conflict with the LP (in particular Policies GEN2 and GEN3), ANP and LNP in terms of policies restricting the provision of housing outside identified built up area boundaries, such that the proposed development would conflict with the development plan as a whole. However, as the supply of deliverable housing sites in the district is less than three years, those policies cannot be considered up to date. As a result, I attach limited weight to the conflict with those policies within the LP, ANP and LNP. Therefore, the appeal should be considered in light of the presumption in favour of sustainable development and the tilted balance in the final bullet point of paragraph 14 of the Framework applies. This reflects the conclusions of the Council in determining the alternative development under reference A/169/17/OUT.
26. Sustainable development has three dimensions that must be considered together, being economic, social and environmental. In this case, there would be economic benefits during the construction of the development and future residents would support local services and facilities. The provision of dwellings, including affordable dwellings, and a care home would have positive social benefits to meet the needs of current and future residents. I have concluded that the development would have adequate links to services and facilities and would contribute toward provision of NHS services, education and library provision, footpath improvement and open space. It would result in development of land outside the built up area contrary to the LP, ANP and LNP, but I have not identified any other environmental harm.
27. For these reasons, I conclude that the adverse impacts of the development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. I therefore consider that the proposal would represent sustainable development, as that term is used in the Framework. This leads me to conclude that the appeal should be allowed, notwithstanding the conflict with the development plan.

### **Conditions**

28. In addition to conditions providing timescales for the submission of reserved matters and commencement of the development that should be imposed to address legislative requirements, in the interests of the character and appearance of the site and the locality, a condition shall be imposed in relation to reserved matters of access, appearance, scale, layout and landscaping. I

have imposed a condition specifying the relevant drawings as this provides certainty. In addition, a condition on the phasing of development is necessary to ensure the development works take place without undue disturbance to neighbouring occupiers and to maintain highway safety.

29. A condition is necessary for a written scheme of investigation prior to development commencing as the site is of archaeological significance. Conditions requiring details and implementation of a surface water drainage system, including ensuring access to any watercourse or culvert for maintenance purposes, and disposal of sewage are necessary in order to reduce the impact of the development on flooding and manage run-off flow rates. A condition for the provision of the railway bridge is necessary to ensure safe pedestrian access across the railway.
30. A condition is necessary for a Travel Plan in order to protect highway and pedestrian safety. A condition is necessary to protect the proposed dwellings and care home from noise is necessary in order to provide adequate living conditions for future occupiers of the proposed development. A condition is necessary to provide, prior to development commencing, a construction method statement to ensure the development works take place without undue disturbance to neighbouring occupiers and to maintain highway safety and in order to provide ecological enhancements on the site. A condition relating to lighting is necessary to protect the character and appearance of the area, living conditions of surrounding occupiers and biodiversity of the area. Conditions are necessary to ensure development take place in accordance with ecological appraisal and the bat, water vole and reptile surveys in order to protect biodiversity in and around the site. Conditions are necessary to protect any badgers and trees in and around the site during the course of development in order to protect biodiversity and the character and appearance of the area.
31. In some cases I have amended the wording of conditions suggested by the Council in the interests of clarity. I have not included a condition relating to the pedestrian connectivity to the eastern boundary as this will be considered alongside the means of access reserved matter. I have not included a condition requiring the vehicular access, car or cycle parking serving the development be constructed in accordance with reserved matters details as that would be considered with the access and layout reserved matters. A condition requiring a Landscape Management Plan is not necessary as this would be considered alongside the landscaping reserved matter. A condition requiring provision of decentralised and renewable or low-carbon energy sources goes beyond what is necessary to make the development acceptable in planning terms.

### **Conclusion**

32. For the above reasons and taking into account all other matters raised, I conclude that the proposal would constitute sustainable development and, consequently, the appeal should succeed.

*AJ Steen*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 1709-01K – Location Plan.
- 5) In conjunction with the first reserved matters details submitted pursuant to condition 1) details of phasing for implementation of the development hereby permitted shall be submitted and approved in writing by the local planning authority. Thereafter any variations to the approved phasing details shall be submitted to and approved in writing by the local planning authority with subsequent applications for approval of reserved matters. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) No development shall take place until arrangements for the future access and maintenance of any watercourse or culvert (piped watercourse) crossing or abutting the site shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and maintained in accordance with the approved details.

- 9) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 10) Prior to occupation of any part of the development hereby approved the railway bridge proposed shall be implemented in accordance with details of construction and design to be submitted to and approved by the local planning authority.
- 11) No part of the development shall be first occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan once approved shall be implemented as specified within the approved document.
- 12) Construction work shall not take place until a scheme for protecting the proposed dwellings and care home from noise from the A259 and railway line shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any of the dwellings or the care home are occupied and retained thereafter.
- 13) 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 arrangements for public consultation and liaison during the construction works;
  - ii) the proposed method should piling occur;
  - iii) noise mitigation barriers;
  - iv) the parking of vehicles of site operatives and visitors;
  - v) loading and unloading of plant and materials;
  - vi) storage of plant and materials used in constructing the development;
  - vii) wheel washing facilities;
  - viii) measures to control the emission of dust and dirt during construction;
  - ix) details of any flood lighting, including location, height, type and direction;
  - x) delivery, demolition and construction working hours.

The Construction Method Statement should also incorporate details of environmental enhancements on site. This should include:

- wildlife corridor established along the southern boundary of the site;
- any trees removed should be replaced at a ratio of 2:1;
- wildlife pond;
- wildflower meadow;
- filling any gaps in tree lines or hedgerows with native species;
- bat and bird boxes installed on the site;
- grassland areas managed to benefit reptiles; and
- log piles onsite.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) No lighting shall be installed until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage have been submitted to and approved in writing by the local planning authority. The



lighting shall be installed and maintained in accordance with the approved details.

15) Development shall be carried out in accordance with the:

Bat Survey and Mitigation Plan by The Ecology Partnership dated 3 May 2017;

Water Vole Mitigation Strategy and Method Statement by The Ecology Partnership dated May 2017; and

Reptile Survey by The Ecology Partnership dated May 2017.

16) No development shall take place until a badger survey, including a mitigation strategy if a badger sett is found on site, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in strict accordance with the badger survey.

17) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

Richborough Estates