



Appeal Decision

Hearing Held on 16 May 2018

Site visit made on 16 May 2018

by **Mike Robins MSc BSc(Hons) MRTPI**

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

Decision date: 11th June 2018.

Appeal Ref: **APP/L3815/W/17/3191076**

Land West of Old Farm Road, Selsey, West Sussex

- 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 Thawcroft Limited against the decision of Chichester District Council.
- The application Ref SY/16/03997/OUT, dated 7 December 2016, was refused by notice dated 9 June 2017.
- The development proposed is the construction of 68 No. residential units with primary access off Old Farm Road.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters other than access reserved for future determination.
3. A Statement of Common Ground (SoCG) was submitted, signed and dated 11 May 2018. Amongst other matters, this set out the mix of housing proposed and the initial plans for determination, all identified as illustrative. I have taken these into account on that basis.
4. At the Hearing it was identified that the plan showing details of the access, while included with the Traffic Assessment, was not fully reflective of the final proposed approach and was not part of the approved plans. It was agreed by the main parties that a plan would be submitted to address this. I have considered whether this would represent any form of prejudice to any party and am satisfied that it would not and agreed to the submission of the plan¹.
5. In addition to a short visit prior to the Hearing, and with the agreement of all parties, I made a further unaccompanied visit to the site, taking views from Old Farm Road, Warner's Road and the footpath to the east of the site. I was also able to view the surrounding area including the road access proposed to the site.
6. A draft agreement made under s106 of the Town and Country Planning Act 1990 and s111 of the Local Government Act 1972, was submitted to address affordable housing, landscaping and open space provision and relevant contributions. It was identified that there may be some revisions necessary; nonetheless, the Council were content that the contributions proposed in the

¹ CTP-16-289-SK01A

agreement relating to the nearby Pagham Harbour Special Protection Area (SPA) and to relevant infrastructure contributions, fully addressed their previous objections and their reasons for refusal on these matters. A signed agreement was submitted after the Hearing; I address this later in my decision.

Main Issues

7. Accordingly, the main issues in this case are:

- whether this is a suitable site for housing having regard to local and national policy;
- whether the proposal would comply with planning policy which seeks to steer new development away from areas at the highest risk of flooding.

Reasons

Background and Policy Position

8. The appeal site is an open grassed area to the west of the town of Selsey. It is approached from the main road, the B2145 High Street, via School Lane and through a housing estate. The site has holiday parks to the north and further large sites to the west. Parts of the site lie within the tidal floodplain, including areas in Flood Zones 2 and 3. Although a small part lies within the current designated settlement boundary, the majority of the site lies outside, but adjacent to it.
9. The development plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029 (the Local Plan). This was adopted in 2015, albeit it is common ground that because of infrastructure constraints, principally the A27 Chichester Bypass, the plan did not meet the full identified housing needs for the area. Nonetheless, the Plan was found sound on examination, where it was accepted that it represented a positive approach to housing delivery, subject to a commitment to a review by 2020.
10. The Local Plan review is underway and reported by the Council to be proceeding in accordance with the Local Development Scheme, which anticipates consultation on preferred approaches during 2018, examination in 2019 and adoption in 2020. I am conscious that the appellant refers me to delays in the adoption of the current Local Plan; nonetheless, I have no convincing evidence before me that this timetable will not be met. In light of the relatively early stage of this review, it can be given very limited weight. The implications of the review on this proposal are addressed below.
11. Selsey are currently producing their Neighbourhood Development Plan (the NP). While an initial plan in 2014 did include the site as having potential for housing, albeit acknowledging the need to resolve matters of flood risk, this plan was withdrawn in 2015 following an interim report from an Examiner. The current NP was submitted by Selsey Town Council in September 2017. This does not include the site for housing and proposes that the settlement boundary be redrawn to exclude the small area of site currently within it, while extending the boundary to encompass two sites that have recently received permission for housing, referred to in the Hearing as Park Farm and Drift Field.
12. I note the appellant argues that the removal of the site was because of the number of houses now permitted and not a reflection of the merits of the site

itself or its suitability for housing. Nonetheless, the NP has completed its Regulation 16 consultation with the Council and is now awaiting appointment of an independent Examiner. In accordance with paragraph 216 of the National Planning Policy Framework (the Framework), I ascribe moderate weight to the policies in this plan.

13. The site is reported to have originally been part of a larger site, much of which has been granted permission for housing and now comprises the neighbouring estate. The appeal site was excluded from this larger site during the Manhood Local Plan examination, with delivery of the whole site being considered to be excessive for the needs at that time. It was then considered as part of the Council's Strategic Housing Land Availability Assessment (SHLAA), but was identified as having limited potential because of flooding constraints.
14. The appellant now argues that the relatively recent completion of a large scale flood alleviation scheme, the Medmerry Re-alignment, means that there are limited constraints to development of the site, and that housing pressures across the district are such that it is sequentially preferable for development.

Whether the appeal site represents an appropriate location for housing

15. The Local Plan was adopted relatively recently and sets out a defined development strategy and settlement hierarchy in Policy 2. The site lies within the Manhood Peninsular, which the Local Plan identifies as being an area with a specific set of planning challenges, including areas at risk of flooding, extensive environmental designations and poor road accessibility, and consequently it proposes more limited development in this area. While over 7,000 homes are sought, the Plan proposes less than 900 for the Peninsular.
16. Selsey itself is identified as a Settlement Hub, but one where significant constraints are imposed by its location. Consequently, Policy 23 establishes a strategic development approach for Selsey where new development to meet identified local needs will be supported. This is set out as 150 homes. Accompanying text to this policy indicates that this modest allocation reflects the town's physical, environmental and accessibility constraints. This figure derives from a Settlement Capacity Profile document, dated 2013², which informed preparation of the Local Plan, and set out detail on the development, infrastructure and environmental capacity constraints of the area.
17. Shortly prior to adoption of the Local Plan, two appeals at Park Farm and Drift Field identified a lack of a five year housing land supply (5YHLS), with one resulting in a permission for housing³. Subsequent to those appeal decisions, updated proposals on these two sites have resulted in planning permissions being granted for 249 houses in total. Development at Drift Field is well underway, while full planning permission for the housing element of the Park Farm development is reported to be progressing.
18. The appellant argues that the figure of 150 established by the strategic approach in the Local Plan, should not be considered as a ceiling for housing provision. The Council confirmed at the Hearing that they accept it is not a maximum figure; I concur. There is always a need for some flexibility to allow for material changes that may lead to a reduction in the constraints and to opportunities to meet what is accepted as a housing need across the district.

² Document 3

³ APP/L3815/A/13/2179845 and APP/L3815/A/13/2202575

However, while I note the implementation of the Medmerry Re-alignment Scheme, there remain significant environmental, residual flood risk and accessibility constraints in the area. To my mind, the figure of 150 was an appropriate broad target for acceptable development in this part of the Manhood Peninsular. Against such a target, with permissions for 249 houses recently approved, the additional 68 houses would represent a very significant increase.

19. The proposed housing would therefore conflict with the strategic approach set out in the Local Plan under Policies 2 and 23. Lying outside of the settlement boundary, it would represent development within the countryside. It would not provide the necessary essential, small-scale, local need development sought by Policy 45 and thus would conflict with the development plan in that regard also.
20. Nonetheless, the appellant considers that there is a compelling need for housing sufficient to justify the proposal, whether there is a 5YHLS or not. It was argued that significant weight arises in favour of the proposal, with Selsey having a recognised need for housing generally and affordable housing in particular. Thus three propositions are set out in the appellant's case: first, that failing to meet the Objectively Assessed Needs (OAN) means that the Local Plan policies should be considered out of date, second, that in any event the Council cannot demonstrate a 5YHLS and relevant policies for the supply of housing should be considered out of date; and third, that even were they to be able to do so, sufficient weight arises in favour of the proposal from the delivery of housing to outweigh any policy conflict due to the lack of constraints to development relating directly to the site.
21. It is common ground that the housing requirement figures set out in the Local Plan do not meet the full OAN. However, this does not make the plan out of date; it was found sound and adopted by the Council on that basis. From the evidence before me the Council has sought to calculate their 5YHLS on their housing requirement, identified in the Planning Practice Guidance (PPG) as the appropriate starting point, currently 435 houses per annum.
22. The appellant refers me to a decision from 2017 in Oving⁴, at which the Inspector found that the Council could not demonstrate a 5YHLS against this housing requirement. Contrary to the Council's proposed supply figures of a surplus of 613 dwellings, the Inspector's judgement was that 658 dwellings should be excluded from the supply calculations, leaving a shortfall of 45 dwellings against the 5 year requirement set out in the plan.
23. The Council have provided figures to this appeal that indicate a requirement of 3,053 dwellings and a supply figure, calculated taking into account the Oving appeal decision, of 3,211; a supply equating to 5.26 years. The appellant has not sought to challenge these figures directly, but consider that the Council have not accounted for the increased requirements associated with the Local Plan review, the incorporation of the Standardised Methodology figures and potentially housing requirements from the emerging plan for the South Downs National Park.
24. The Local Plan review is underway and the Council have clearly indicated a commitment to seek to meet the OAN for the district. However, this cannot be taken as the definitive housing requirement at this stage of the process.

⁴ APP/L3815/W/16/3165228

Infrastructure constraints remain, indeed the central funding for the A27 improvements would appear to be in doubt. Furthermore, while the recent standard method for calculating housing need has been developed, and indicates an increase in the housing requirement for the district, it has not yet been implemented, and awaits the completion of the consultation on and delivery of the new Framework. While some weight can be given to this, transitional arrangements are not yet in place and the document has not been issued.

25. At the Hearing, the appellant raised the issue of a recent position as regards the part of the district covered by the South Downs National Park. It was reported that the National Park would be unable to meet its OAN, representing a shortfall of 44 homes per annum for Chichester. To my mind this cannot be taken further within this appeal. Such matters must be left for consideration as part of the formal Local Plan process under the Duty to Cooperate. While this may be a matter which affects the housing requirement ultimately assessed as part of the Local Plan Review, it can carry very limited weight at this stage.
26. Consequently, although the Council accepted at the Hearing that there is likely to be an increase in the requirement, I am satisfied that there is insufficient evidence to assess the scale of this increase, and that calculations based on the period 2017 to 2012, incorporating the shortfall and a 20% buffer, are currently an appropriate methodology for the assessment of the 5YHLS. Accordingly, I have no compelling evidence to question the Council's assessment and, on the evidence before me, consider that they can demonstrate a 5YHLS.
27. To conclude on the suitability of the site, it is clear that there is significant pressure for housing in the district as a whole and a specific need for affordable housing in the local area. I will address the relative weight arising in favour of the scheme in my planning balance below, nonetheless, the adopted local plan and policies are not out of date and the presumption in favour of sustainable development and the tilted balance set out in paragraph 14 of the Framework are not engaged. The proposal would conflict with the development strategy and settlement hierarchy set out in the Local Plan and with the emerging NP.

Flood Risk

28. The appellant submitted plans showing the Environment Agency's (the Agency's) Flood Map for Planning. These included the previous extent⁵, and the updated extent⁶, 2018, of Flood Zones (FZ) 2 and 3 following the revised modelling associated with the Medmerry Re-alignment Scheme. A further plan showing the defended and undefended tidal flood extents was also submitted⁷.
29. The appellant argues that the scheme has been designed to respond to flood risk across the site with residential units placed in the areas of least risk. However, while there is shown to be a reduction in the extent of FZ 2 and 3 in the most recent iteration, the appellant accepted that some 17 dwellings, based on the latest illustrative layout, would be in FZ 3, and 8 in FZ 2. I note the Council's concern that the illustrative plans represent a scheme that they

⁵ Document 10

⁶ Document 11

⁷ Document 12

- would not support in terms of the layout and that they consider the number of properties within the FZ, were 68 units still to be achieved, would be greater.
30. Flood alleviation schemes, in this case the Medmerry Re-alignment, coupled with those which form the Budd Leisure defences, are likely to provide a high level of protection to properties behind them, including the appeal site. However, they do not remove the risk of flooding, which remains were the flood event to exceed the design parameters of the scheme or were the scheme to fail, through breach or, in the long term, lack of maintenance and upkeep. These risks will increase with climate change. This is why assessment of flood risk for planning purposes is based on the undefended FZ.
 31. As set out in the Framework, paragraph 100, inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Irrespective of the number of properties that would fall within the relevant FZ, it has been correctly accepted that the site needs to be subject to the Sequential Test (ST), whose aim is to steer new development to areas with the lowest probability of flooding.
 32. The appellant carried out a site specific Flood Risk Assessment (FRA) and a ST, which utilised the SHLAA. In essence, all but 20 sites identified in the SHLAA were excluded either because they were larger than 5 hectares, smaller than 2 hectares, were identified as strategic sites, had planning permission or were already included within the housing land supply. The remaining 20 sites were assessed and the ST concluded that there were no other preferable sites for housing in the district.
 33. A ST should seek to identify sites that are reasonably available at lower risk, and the PPG advises that it should be a pragmatic approach. The Council submitted examples of appeals⁸ supporting their position that the ST should look wider than the narrow parameters dictated by the existing size of the site or by schemes currently benefiting from allocation or planning permission. They refer to the Agency's guidance⁹, which explicitly sets out as a starting point sites that are allocated, have planning permission or are 'windfall' sites. The Council also identified a number of sites within the SHLAA, which they considered as being sequentially preferable, subject to further assessment, including a number relatively close to Selsey.
 34. The appellant argues that the circumstances in the district are such that the Council must seek more land for housing such that to consider land already identified, be it via allocation or the grant of permission, would not be the preferable option. A number of appeals¹⁰ were submitted which address this.
 35. I have considered the submitted evidence. Any ST must respond to the specific issues of the district or the agreed area for the ST. Furthermore, it must respond to the development needs and not the developers' private interests, be it in ownership of the land or an ambition to deliver a precise number of dwellings. Where areas at flood risk represent the majority of the land available, especially where there is an acknowledged and pressing need for additional housing land, this may limit the number of sequentially

⁸ Appendix 15 Council Statement of Case

⁹ Flood Risk Assessment: the Sequential Test for Applicants – Gov.uk

¹⁰ Documents 4, 5 and 6

- preferable sites. In such cases land at lower flood risk, or with a higher level of protection, may also be considered preferable.
36. However, flood risk should not be offset against housing need without very careful assessment of the risks and benefits, especially in a district where the majority of land is not at risk of flooding. The Framework itself sets out specific policies of restriction, flood risk being one. Consequently, while I accept that there is a good standard of flood alleviation offered, flood risk remains higher than land across the majority of the district. As such, I consider that the possibility of building out part of a larger site, or combining two or more smaller sites should not have been rejected out of hand, and this may include land that has not been identified through the SHLAA process. Similarly, land that is allocated or has permission, but is not being brought forward could also have been considered as a sequentially preferable option.
37. On balance, while I accept that the Council are likely to need to seek additional land for housing, in light of my findings above there is insufficient evidence to show that all options to meet the development's needs have been fully assessed in the ST. Consequently, the proposal has not properly addressed the ST and so conflicts with the Framework and Policy 42 of the Local Plan, which references the Framework requirements in this regard.
38. In light of this, there is no need for me to consider the Exception Test for this site. However, in support of the scheme, the appellant refers to the lack of objection by the Agency; this must be considered in context. The Agency does not and should not comment on the acceptability of any ST. While they may advise on the general approach to a ST, the decision as to whether a site is sequentially preferable so as to accept a location at risk of flooding must be one for the local planning authority. Quite rightly the Agency have commented on their position as to whether the site would remain safe for its lifetime, an approach that accepts there remains a residual risk to occupiers, but this does not inform the site specific ST.

Other Matters

39. The scheme has been submitted as being for 68 dwellings. The Council have argued that in order to 'fit' the dwellings to the areas at lower flood risk, this would result in a cramped layout with awkward relationships and the potential for an unacceptable urban design response in relation to how those dwellings address the road. The alternative would be for a layout that placed more dwellings within FZ 3.
40. The scheme is in outline, the layout is not fixed at this point, although it is clear that were it to be going ahead it would need to limit the number of dwellings within FZ 2 and 3. It strikes me that while the current illustrative layout does present some design issues, the existing context does not establish such a rigid character so as to constrain the relationship of dwellings to the road. The relationship between dwellings is one that could be a function of the scale of the housing, albeit there is an agreed mix to be delivered.
41. Nonetheless, this led to a discussion at the Hearing as to whether the quantum of development could be reduced so as to address potential design issues or even to reduce the number of dwellings within the flood zones. It was suggested that a condition could limit the number of dwellings, or even establish a revised description so that up to 68 dwellings could be delivered.

42. I have considered this carefully, conscious that even a reduction in the scale of a development can be considered as a change that could be prejudicial to others. A minor revision to the number of dwellings to respond to design issues may not be prejudicial, but a change to the description of the development, or a restriction imposed by condition in order to respond to the flood risk on the site would, in my view, be sufficient to represent a material change to the development considered by the Council. Such a change would not be appropriate to consider at appeal, notably where the strategic implication of the quantum of development was a central part of the case set out by parties.
43. The 'Procedural Guide – Planning Appeals – England' advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. I do not consider that the scheme should or could be changed at this point to address the concerns I have set out above.
44. I am further conscious of the concerns of local residents and the Parish Council as regards the local highway network. I was referred to specific problems with the junction of School Lane and High Street, including that associated with commercial lorries, and of the perceived increase in use of the roads that lead to the site.
45. The appellant submitted a Transport Statement which considered and modelled the capacity of junctions in the local area. Based on a TRICS¹¹ database assessment some 36 and 37 movements were calculated for the AM and PM peak. The modelling indicated no significant capacity issues. In addition, the access arrangements were subjected to a safety audit, and all matters identified were addressed. I note that there were no objections to the scheme from the statutory consultees, subject to conditions on the matter of the local highway network and mitigation contributions for the A27.
46. However, during my site visit I observed how lorry parking could delay access to and from School Lane and effect visibilities to an extent. I was also able to view parking along School Lane and Horsefield Road that narrowed the carriageway. Traffic responding to any obstruction may be held back, or have to wait for a gap in the flow along High Street; the scheme would add some further traffic to these potential delays. The issue is, to my mind, one of delay and inconvenience and overall the level of traffic associated with the scheme would not result in a severe impact such as to compromise highway safety.

The Legal Agreement

47. A final signed agreement was submitted after the Hearing, dated 29 May 2018, which included a Schedule addressing the delivery of less than 68 dwellings if any permission were to limit the numbers. The Council have submitted a note which addresses the affordable housing and open space provision, as well as the landscape management plan and contributions to mitigate recreational disturbance and increased pressure on the relevant A27 junctions. These latter matters address mitigation and represent no weight in favour of the scheme. I am satisfied that the 21 houses proposed to be provided as affordable units would comply with Local Plan Policy 34 and ascribe moderate weight in favour

¹¹ Trip Rate Information Computer System

of the proposal with regard to these. The open space provision, a minimum of 220 square metres, would be accessible to the public; it would therefore introduce some limited benefit to the wider community.

48. I have considered the proposed contributions against the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (CIL) 2010 (as amended) and am satisfied that, where relevant, these comply with the tests set out therein. Other contributions made under the CIL Charging Schedule, which the appellant did suggest could represent improvements for the local area, must only be to address additional pressure on infrastructure as a result of any development; these therefore would represent neutral weight, meeting only mitigation requirements for the scheme.

Planning balance

49. I have found the proposal to conflict with the strategic approach to the distribution of housing as set out in the 2015 Local Plan, in particular to the express requirements of Policies 2 and 23. I have also found that there is insufficient evidence to confirm that the site is sequentially preferable in flood risk terms and conflicts with the Framework and Local Plan Policy 42 in this regard.
50. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicated otherwise. I acknowledge there is a need for housing in the district as a whole, and affordable housing in particular. However, the conflict with flooding policies and my findings regarding the housing land supply lead me to conclude that policies cannot be considered out-of-date and the presumption in favour of sustainable development, set out in paragraph 14 of the Framework, does not apply.
51. To set against these conflicts, I find moderate weight in favour of the scheme with regard to the provision of affordable housing and moderate weight in relation to the provision of open market housing, this weight tempered by the conflict with the development strategy. I also find some limited weight from the provision of public open space. Nonetheless, these benefits do not amount to material considerations which would justify making a decision other than in accordance with the development plan.
52. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Mike Robins
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Rhodes	Planning Consultant – Quod
Angie Fenton	Planning Consultant – Quod
Dr S Anderton	Flood Risk Consultant – Wood Plc
Adam Podmore	Transport Consultant – Cotswold Transport Planning
George Bunn	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Harris	Senior Planning Officer – Chichester District Council
Alex Roberts	Planning Consultant – DLP Planning Ltd

INTERESTED PERSONS:

Mike Beal	Selsey Town Council
Clive Alden	Selsey Town Council
Councillor Purnell	Chichester District and Town Councillor

DOCUMENTS

- 1 Council's Notification letters dated 28/2/18 and 17/4/18
- 2 Draft s106/s111 Agreement
- 3 Settlement Capacity profiles – update October 2013
- 4 Appeal ref: APP/A0665/V/15/3013622
- 5 Appeal ref: APP/V2004/A/11/2154111
- 6 Appeal ref: APP/D0840/W/16/3143424
- 7 Appeal ref: APP/L3815/A/13/2202575
- 8 Appeal ref: APP/L3815/A/12/2179845
- 9 Inspector's report on the Chichester Local Plan
- 10 Map showing previously published Flood Zones
- 11 Map showing updated Flood Map for Planning
- 12 Map showing residential unit locations in relation to modelled flood extents

Documents submitted after the Hearing

- 13 Plan CTP-16-289-SK01A
- 14 Signed and Dated S106/S111 Agreement