



Appeal Decision

Hearing held on 8 January 2013

Site visit made on 8 January 2013

by David Prentis BA BPI MRTPI

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

Decision date: 23 January 2013

Appeal Ref: APP/C3810/A/12/2180855

**Land north of Yapton Road and east of Garden Crescent,
Barnham PO22 0AR**

- 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 Welbeck Strategic Land LLP against the decision of Arun District Council.
 - The application Ref BN/7/12, dated 20 March 2012, was refused by notice dated 9 July 2012.
 - The development proposed is up to 44 dwellings, including 30% affordable, comprising a mix of accommodation ranging from 2 – 4 bedroom houses with associated landscaping and works.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 44 dwellings, including 30% affordable, comprising a mix of accommodation ranging from 2 – 4 bedroom houses with associated landscaping and works at Land north of Yapton Road and east of Garden Crescent, Barnham PO22 0AR in accordance with the terms of the application, Ref BN/7/12, dated 20 March 2012, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary matters

2. The application was in outline with only the means of access to be determined at this stage. Appearance, landscaping, layout, and scale are to be reserved for subsequent approval.
3. The Council refused planning permission for reasons relating to: (1) foul and surface water drainage; (2) conflict with policies restricting development in the countryside; (3) affordable housing; and (4) infrastructure contributions. None of these reasons were pursued at the hearing. The Council advised the hearing that foul drainage could be adequately controlled under other legislation and that surface water drainage could be covered by a condition. The issue of housing land supply was central to the 2nd reason for refusal. The Council's Housing Land Supply Assessment September 2012 (HLSA) is the most recent published statement of its position. However, following a recent appeal decision at Ferring¹, the Council is reconsidering the HLSA and it did not seek to defend the 2nd reason for refusal.

¹ Ref APP/C3810/A/12/2171484

4. An Agreement under S106 of the Town and Country Planning Act 1990 was submitted at the hearing. This would provide for 30% of the dwellings to be delivered as affordable housing and for financial contributions to play areas, libraries, fire and rescue service facilities, and health service facilities. The Council advised that the Agreement resolved the 3rd and 4th reasons for refusal. I consider that the obligations meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I shall take them into account in my decision.

Main issue

5. The main issue is whether the proposed development is acceptable in principle, having regard to the development plan and other material considerations, including the National Planning Policy Framework (*the Framework*) and housing land supply.

Reasons

6. The appeal site is a former nursery garden on the edge of Barnham. Most of the structures associated with the former use have been removed although some concrete bases and one derelict building remain. The section of the site fronting Yapton Road is largely overgrown with naturally regenerating woodland. There is a more substantial belt of trees running through the central part of the site, some of which are covered by a Tree Preservation Order (TPO). There is a belt of vegetation along the eastern boundary. The remainder of the site is a more or less rectangular field. A railway line passes along the northern site boundary, beyond which is land on which permission has been granted for residential development. On the opposite side of Yapton Road is the Angels Nursery site which also has permission for residential development. The appeal site is adjoined by housing to the west and by predominantly open land used as a caravan park to the east.

The development plan

7. The development plan includes the South East Plan 2009 (SEP) and the saved policies of the Arun District Local Plan 2003 (ADLP). ADLP Policy GEN2 establishes built-up area boundaries (BUAB) around settlements. Outside these boundaries development is to be restricted unless it is consistent with other local plan policies. Policy GEN3 seeks to protect the countryside. It sets out the limited circumstances in which development will be permitted. The western boundary of the appeal site adjoins the BUAB of Barnham. It is not disputed that the site is outside the BUAB and within the countryside. The appeal scheme is therefore contrary to Policies GEN2 and GEN3 and it is necessary to consider whether there are other material considerations which indicate that permission ought nevertheless to be granted. In this case the main considerations are the Framework, housing land supply and sustainability. Other factors to weigh in the balance are landscape and visual impact, ecological impact and drainage considerations.

Housing land supply

8. The Framework seeks to boost significantly the supply of housing. Local planning authorities are encouraged to ensure that their local plan meets the needs for market and affordable housing in their housing market area and to identify a supply of deliverable sites sufficient to provide 5 years worth of housing against their requirements. To ensure choice and competition in the

market an additional buffer of 5% is required or, where there has been a record of persistent under delivery, a buffer of 20%.

9. The government has stated its intention to revoke the SEP. However, in this case the Council and the appellant agree that the SEP currently provides the only realistic basis for an assessment of housing land supply in Arun District. I agree because the emerging Arun Local Plan is still at an early stage and very little weight can be attached to it. The proposed Joint Neighbourhood Plan for Barnham and Eastergate has yet to emerge even in draft form.
10. In this case most of the elements of the assessment were in dispute, including the amount of unmet need, how such need should be taken into account, the base date for the 5 year calculation, the supply of deliverable housing sites and whether the buffer required by the Framework should be 5% or 20%. I have therefore made my own assessment on the basis of the evidence before me. My attention has been drawn to recent appeal decisions relating to residential development in Arun District including sites at Ferring (referred to above), the Woodgate Centre², Goodacres³ and Burndell Road, Yapton⁴ and I have taken account of these decisions.
11. SEP Policy H1 sets out the housing requirement from 2006 to 2026 for the South East Region, the various sub-regions and individual local authority areas. The requirement for Arun is for an average of 565 dwellings per year over the life of the SEP. Policy H2 sets out a number of considerations which local planning authorities should take into account when planning for the delivery of housing. One such consideration is HP2(viii) which refers to the need to address any backlog of unmet housing needs within the housing market area they relate to in the first 10 years of the plan.
12. The appellant's interpretation of the SEP was that any undersupply relating to the period 2001 – 2006 should be added to the SEP requirement. The Council's HLSA appears to have taken the same approach, although its assessment of the amount of the undersupply attributable to this period is different. The Council is currently reconsidering this matter and was unable to assist me further at the hearing. In October 2009 the Government Office for the South East wrote to the South East England Partnership Board responding to various queries relating to the SEP. That letter commented that the 2006 SEP baseline figures included an estimate for previous undersupply and that H2(viii) is aimed at encouraging local planning authorities to forward load development where relevant. The letter is not definitive in terms of how the SEP should be interpreted. Nevertheless, it has prompted me to question the appellant's approach and to reach my own view on this matter.
13. In 3 of the appeal cases referred to above the Inspectors took account of undersupply arising during the period 2001 to 2006. However, there is nothing before me which indicates that the principle of the pre-SEP undersupply was debated in those appeals. In those cases discussion appears to have focused on the amount of the undersupply and when it should be made good. The SEP must be read as a whole and it appears to me that the housing requirements, by District, are clearly set out in Policy H1. Nothing in Policy H1 indicates that previous undersupply should be added to those requirements. In making my

² Ref APP/C3810/A/11/2163208

³ Ref APP/C3810/A/11/2161133

⁴ Ref APP/C3810/A/11/2155343

assessment I shall not add an additional requirement relating to the period before 2006.

14. The appellant's assessment is for the 5 years commencing April 2012 whereas the HLSA is for the 5 years commencing April 2013. At the hearing neither the Council nor the appellant suggested that this difference is likely to be of great significance. The projected completions for 2012/13 are not in dispute and can be taken into account in either case. The Ferring Inspector noted that we are now closer to April 2013 and adopted the Council's approach – I shall do the same.
15. I turn to the undersupply during the period of the SEP. The Council's HLSA states that net completions between 2006 and 2012 amounted to 3,117. Adding the projected 377 completions for 2012/13 gives a total of 3,494. This is a shortfall of 461 in relation to the SEP requirement of 3,955⁵. The housing trajectory set out in the HLSA proposes that this undersupply be added to the SEP requirements in the period from 2018 onwards which is outside the 5 year period. Having regard to the SEP emphasis on forward loading any unmet needs, coupled with the Framework's emphasis on housing delivery, I can see no justification for this approach. I consider that the shortfall should be added to the 5 year requirement giving a total requirement of 3,286 for the period 2013 to 2018. The Council's HLSA projects net completions of 3,197 for the relevant period, which is slightly below the total requirement.
16. There was a considerable difference between the Council and the appellant in relation to the supply of deliverable sites. The appellant accepted the Council's figures for small sites and windfall sites but disagreed with the figures for larger sites. In general, the appellant preferred the projected delivery rates prepared by West Sussex County Council (WSCC). My attention was drawn to two large sites which together account for a significant element of the supply.
17. The HLSA projects 505 dwellings from a site at Toddington Nurseries, Littlehampton. This site has yet to receive outline planning permission because the section 106 Agreement has taken a long time to complete. Given the need to obtain reserved matters approval and to carry out any site preparation works it seems unlikely that there would be completions before 2014/15 at the earliest. Even then, the site is likely to take some time to build up to full production. The WSCC figures for this site show no delivery before 2015/16, and then only around 50 dwellings per year, implying around 150 during the 5 year period. On the evidence before me it seems likely that housing delivery from this site would fall somewhere between the HLSA and the WSCC figures. This would be well below the Council's projection for this site, perhaps by around 150 dwellings.
18. The HLSA projects 460 dwellings from a site at Courtwick Lane, Littlehampton. The WSCC figures show total delivery of 340 dwellings in the years 2014/15, 2015/16 and 2016/2017. Bearing in mind the need to allow for a further year's delivery, the WSCC figures seem broadly consistent with the HLSA.
19. The HLSA includes some sites identified in the Council's Strategic Housing Land Availability Assessment (SHLAA) Update May 2012. The appellant identified some instances of double counting and/or sites which have attracted a refusal

⁵ 565 dwellings per year x 7 years. The appellant's calculation of the shortfall in relation to the SEP for the period 2006 to 2012 is very similar, although not identical, to the Council's calculation.

of planning permission. However, the total number of units involved was not so great as to have a significant impact on my overall assessment.

20. Looking at the 7 year period since the start date of the SEP, housing delivery has exceeded the requirement in two years (2007/8 and 2011/12) and fell only slightly below it in one year (2008/9). In the remaining 4 years delivery fell, or is projected to fall, materially below the requirement. Having regard to the Framework, I do not think that this amounts to a pattern of persistent under delivery and I consider that a 5% buffer is appropriate in this case.
21. As previous Inspectors have noted, the assessment of housing land supply is not an exact process. Nevertheless, I have made a broad assessment based on the evidence before me. My overall conclusion is that the 5 year requirement is around 3,286. Adding a 5% buffer would take that figure to around 3,450. The Council's own assessment of the available supply (3,197) falls short of the 5 year requirement, even without the buffer. However, the Council's figures for Toddington Nurseries appear over-optimistic and the available supply is likely to be around 3,050⁶. This equates to around 4.6 years supply. It therefore seems unlikely that the supply will reach the 5 year requirement, still less the 5% buffer called for by the Framework.

Sustainability

22. The site is within walking distance of the centre of Barnham which has a good range of shops and local services. Barnham has a railway station which provides links to various urban centres and there are also bus services. The Council considers that this is a sustainable location for residential development and I share that view.

Landscape and visual impact

23. The proposed area for development would be set well back from Yapton Road. The site is visually contained by existing trees and vegetation. The illustrative plans show how most of the existing landscape framework could be retained and strengthened by additional planting. Appearance, layout, scale and landscaping are all reserved matters. Subject to careful consideration of these matters, there is no reason to think that the proposal would result in material harm to the setting of Barnham or the character and appearance of the area generally.
24. The tree belt within the site contains several important trees which are skyline features within the locality. The illustrative plans show that most of these, including all of the TPO trees, would be retained. The layout of the development would be controlled at the reserved matters stage. It would be important to ensure that the trees were properly protected during the construction process. This is a matter which could be covered by a condition.

Ecological impacts

25. The application was supported by ecological surveys which identified a tree used as a bat roost and an area of high bat activity along the northern side of the main tree belt. All UK bats are protected species. The surveys also identified the presence of slow worm. The reports included recommendations for mitigation, including retention of trees and vegetation, woodland

⁶ 3,197 - 150 = 3,047. As this is a broad estimate I have rounded it to 3,050.

management, careful design of exterior lighting and translocation of reptiles within the site. These matters would no doubt be taken into account at the reserved matters stage. Moreover, the protection of trees, which I have referred to above, would limit any ecological impacts. In addition, it would be appropriate to impose conditions requiring the approval of a scheme of ecological mitigation and management and details of any external lighting. Subject to these conditions, the proposals would not result in material harm to the ecology of the site.

Surface water drainage

26. Although the site is in Flood Zone 1, which has a very low risk of fluvial flooding, the locality has a relatively high water table. At the hearing the Parish Council drew attention to the history of surface water flooding in Barnham. The application was supported by a flood risk assessment which included proposals for a sustainable urban drainage system (SUDS), including a swale which would attenuate the flow of surface water from the site. The Council and the appellant agreed the wording of a suggested condition which would allow the design of the SUDS to be finalised following a period of groundwater monitoring. Subject to such a condition, the scheme would not be at undue risk of flooding itself and would not result in an unacceptably increased risk of flooding elsewhere.

Foul drainage

27. It is intended that the proposed houses would be connected to the public foul drainage system. There are existing problems with this system in Barnham, which suffers from the ingress of surface water during times of heavy rainfall. The appellant has investigated possible technical solutions to ensure that the appeal scheme would not have a harmful impact on the existing situation. Southern Water has not objected to the appeal scheme and, at the hearing, the Council and the appellant agreed that this matter would be addressed by other legislation. No planning conditions were suggested.

Conclusion

28. The appeal site is within the countryside and the proposal is contrary to Policies GEN2 and GEN3 of the ADLP. However, as the Council cannot demonstrate a 5 year supply of deliverable housing sites, the Framework advises that these policies should not be considered up-to-date. The presumption in favour of sustainable development set out in paragraph 14 of the Framework applies. The scheme would have the benefits of making a useful contribution to the supply of housing, including affordable housing, in a sustainable location. Whilst the proposal would result in the encroachment of built development into the countryside, it would not result in material harm to the character and appearance of the area or to the setting of Barnham. I have not identified any other factors which weigh against the appeal. I conclude that in this case the factors weighing in support of the appeal are sufficient to outweigh the loss of countryside that would result. The appeal should therefore be allowed.

Conditions

29. The Council has suggested conditions which I have considered in the light of Circular 11/95 *The use of conditions in planning permissions*. In some cases I have combined some of the suggested conditions and adjusted detailed wording to reflect that advice. I have referred above to the need for conditions

relating to tree protection, ecological mitigation and management, external lighting and the proposed SUDS.

30. In addition, conditions relating to facing materials, boundary treatments and a landscape management plan are needed in the interests of the character and appearance of the area. A condition restricting development within 15m of the railway boundary is needed to ensure satisfactory living conditions for future occupiers, having regard to railway noise. A condition is needed to protect the archaeological potential of the site. Conditions relating to renewable energy and the Code for Sustainable Homes are needed in the interests of sustainable development. It would be necessary to make provision for public open space in accordance with the Council's policies and to provide a satisfactory standard of development. A condition relating to the provision of access to dwellings is needed in the interests of highway safety and the living conditions of occupiers. Conditions relating to visibility splays and measures to prevent mud being carried onto the highway during construction are needed in the interests of highway safety.
31. A suggested condition relating to noise mitigation measures within dwellings is not needed because the noise assessment shows that the fabric of the buildings would provide a satisfactory internal environment.

David Prentis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mark Lowe	Queen's Counsel, instructed by Osborne Clarke
Graham Beck	Luken Beck
John Baird	Osborne Clarke
Joe Jackson	Lizard Landscape
Enrico Isnenghi	WSP
Anna Harlow	Osborne Clarke

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant	of Counsel, instructed by the Solicitor to the Council
Juan Baeza	Appeals Officer, Arun District Council
Dean Frosini	Cole Easdon Consultants

INTERESTED PERSON:

Gerry Reeves	Barnham Parish Council
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DOCUMENTS

- 1 Plan of proposed development areas submitted by the appellant
- 2 Housing land calculation submitted by the appellant
- 3 Bundle of emails relating to drainage matters
- 4 Timetable for Neighbourhood Development Plan
- 5 Letter from South East England Partnership Board of 30 September 2009
- 6 Extract from the Arun District Local Plan
- 7 S106 Agreement dated 7 January 2013

Schedule 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 begins 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 begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until details of the sustainable urban drainage system (SUDS) have been submitted to and approved in writing by the local planning authority. The details shall include levels, sections, profiles, capacity, construction, operation and maintenance including arrangements for the replacement of major components at the end of their design life. The design shall follow the hierarchy of preference for different types of surface water disposal systems as set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Any proposed infiltration drainage shall be supported by groundwater monitoring over a period of time that is representative of typical winter rainfall conditions, to establish highest annual groundwater levels, and percolation testing to BRE 365 or similar approved document. The SUDS shall be implemented in accordance with the approved details prior to the occupation of any dwelling and thereafter the SUDS shall be permanently retained and operated in accordance with those details.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a scheme for the protection of trees during demolition and construction has been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with BS 5837: 2012 *Trees in relation to design, demolition and construction* and shall include details of all existing trees showing which are to be retained and which removed. No trees shall be removed other than in accordance with the approved scheme. The approved scheme shall be implemented prior to the commencement of any works of demolition or construction and shall be retained for the duration of the works hereby permitted.
- 7) No development shall take place until details of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details which shall be permanently retained thereafter.
- 8) No development shall take place until a landscape management plan has been submitted to and approved in writing by the local planning authority. The plan shall include long-term design objectives, management responsibilities and maintenance schedules for all landscape

- areas other than private domestic gardens. Development shall be carried out in accordance with the approved landscape management plan.
- 9) No part of any dwelling shall be located within 15m of the boundary fence of the adjoining railway.
 - 10) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
 - 11) No development shall take place until a scheme for the provision of decentralised and renewable or low-carbon energy has been submitted to and approved in writing by the local planning authority. The scheme shall ensure that at least 10% of the energy supply of the development hereby permitted shall be secured from decentralised and renewable or low-carbon sources as defined in the National Planning Policy Framework. Development shall be carried out in accordance with the approved scheme and permanently retained as such thereafter.
 - 12) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
 - 13) No development shall take place until details of ecological mitigation and management measures have been submitted to and approved in writing by the local planning authority. The measures shall include protection of bats and reptiles during the construction phase and the maintenance and improvements of habitats thereafter. Development shall be carried out in accordance with the approved ecological mitigation and management measures.
 - 14) No development shall take place until details of public open space and amenity areas have been submitted to and approved in writing by the local planning authority. The details shall include any boundary treatment, structures or equipment together with arrangements for future maintenance. Development shall be carried out in accordance with the approved details and permanently retained as such thereafter.
 - 15) No dwelling hereby approved shall be occupied until vehicular access has been provided to it in accordance with plan ITB7022-SK-007 Rev C hereby approved and any layout which is subsequently approved as a reserved matter.
 - 16) The visibility splays shown on plan ITB7022-SK-007 Rev C hereby approved shall be provided prior to the occupation of any dwelling and shall thereafter be permanently retained and kept free of any obstruction above a height of 600mm.
 - 17) No development shall take place until details of measures to prevent vehicles from carrying mud onto the public highway during demolition and construction have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented prior to the commencement of any works of demolition or construction and shall be retained for the duration of the works hereby permitted.