



Appeal Decision

Hearing Held on 15 November 2022

Site visit made on 15 November 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/C3810/W/22/3304168

**Land north of Toddington Lane (adjacent to Lyminster Bypass),
Hampton Park, Littlehampton BN17 7PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by T & L Crawley LLP against Arun District Council.
 - The application Ref LU/417/21/OUT, is dated 17 December 2021.
 - The development proposed is outline planning application for the erection of up to 71 dwellings together with access (all other matters reserved).
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. This is an application for outline planning permission which includes details of the means of access. In this context, all plans depicting a site layout have been treated as purely indicative.
3. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for five reasons, one of which relating to flood risk has since been addressed. The submission of a unilateral undertaking to secure affordable housing and a number of other measures also addresses one of the reasons given by the Council. The three remaining putative reasons have formed the main issues for consideration in the appeal.
4. On the 2 November 2022, the judgement of the Supreme Court on *Hillside Parks Ltd v Snowdonia National Park Authority*¹ (the Hillside Judgement) was handed down. The relevance of this judgement was the subject of correspondence from the main parties and an interested party prior to the hearing and it was further discussed as part of the same. As such, no prejudice has occurred.

Main Issues

5. The main issues are:
 - whether the appeal scheme would affect the approved development of Hampton Park;

¹ Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30

- the effects on the delivery of employment-related development; and
- the effects on nearby existing waste infrastructure.

Background and Context

6. The appeal site (comprised of both parts A and B) forms a part of an area which is under development as part of an urban extension to Littlehampton known as 'Hampton Park' (previously 'North Littlehampton'). Outline planning permission was granted under Ref LU/47/11 (the Outline Permission) on 23 January 2013 for the entire development, including the following:

"...demolition of existing buildings and structures, up to 1,260 residential dwellings (out of a potential 1,460 dwelling masterplan), up to 13,000 sqm of B1 employment floorspace (including 3,000 sqm Enterprise Centre), up to 3,500 sqm of Class A local facilities, a 100 bed hotel, 60 bed care home, a new 2 Form Entry primary school, community centre, youth and leisure facilities, combined heat & power plant, extension to existing household recycling centre, landscaping, replacement and additional allotments, multi-functional green infrastructure including sports pitches (& associated changing facilities), informal open space, children's play areas, primary vehicular access from a new access from the A259 bridging over the railway line with additional access from Mill Lane & Toddington Lane..."

7. The Outline Permission allows for reserved matters submissions to be made until 23 January 2026. Condition 6 of the Outline Permission required that the development be undertaken in "substantial accordance" with the illustrative masterplan drawing number GR.L-002 Rev A ('the Masterplan'), and the Design and Access Statement incorporating Design Guidance dated February 2011. In these approved documents, the appeal site is shown colour coded for commercial uses, in an area intended as a 'gateway' adjoining the new 'Lyminster Bypass'.
8. In 2015 and under Ref LU/346/14/PL², a variation to the Outline Permission was granted to amend a number of conditions, though none of particular relevance to the appeal site or distribution of mixed uses that would form the urban extension.
9. In 2018 and under Ref LU/182/15/PL³, a subsequent variation was made to the Outline Permission, including changes to the approved plans (the 2018 Permission). Condition 2 (amended condition 6 of the Outline Permission) was imposed specifying the newly approved plans. The Condition specifically reads:

"The development hereby permitted shall not be carried out except in substantial accordance with the updated illustrative masterplan drawing number 519-GR.L_002 Rev B ('the Masterplan'), the Design and Access Statement incorporating Design Guidance dated February 2011 (approved under Planning Permission Reference No. LU/47/11) and the Development Framework Document dated August 2017, unless otherwise agreed in writing by the Local Planning Authority".

10. The Amended Land Use Parameter Plan forming part of the approved Development Framework Document shows the appeal site (both parts A and B)

² Dated 20 February 2015

³ Dated 3 October 2018

as colour coded and labelled as 'Non-residential Development'. The Masterplan, Ref 519-GR.L_002 Rev B, shows both parts A and B of the site as being indicatively occupied by large building footprints with car parking areas, suggestive of commercial uses and distinct from the smaller scale residential neighbourhood areas shown elsewhere on the same.

11. Of the Hampton Park development, around 460 houses have been constructed and are either occupied or are due to be made available for occupation. Another c. 260 dwellings have reserved matters permission. Therefore, the balance left to be commenced is around 800 dwellings, of which around 540 remain without the benefit of detailed permission. Other aspects, including the community centre, primary school and employment uses have not yet been delivered.
12. The appellant is a company that has an interest in a relatively small part of the wider Hampton Park site. A separate developer has delivered many of the houses to date, and retains control of much of the rest of the site. The separate developer is an interested party that has submitted representations in relation to the appeal scheme.

Reasons

Effects on Hampton Park

13. The appellant indicates that the appeal scheme would not affect the extant permission for Hampton Park and that the Hillside Judgement, along with related cases such as *Pilkington*⁴, *Sage*⁵ and *Lucas*⁶, were assessed on the basis of very specific circumstances which involved full planning permissions where subsequent consents made it *physically impossible* to continue to build out the first permission as originally granted. The distinction is made that the extant permission relied upon is not a full permission, but an outline one, and that the site is entirely severable from the remainder of the larger "Hampton Park" site. The appellant suggests that the Hillside Judgement referred to a permission with a detailed masterplan, which included the siting of the proposed dwellings and their detailed design, together with an internal access road.
14. The appellant further indicates that there are no conditions or S106 obligations that require the commercial development or 'non-residential development' to come forward at any particular point in time. It is further emphasised that the development was described as providing for "up to 13,000 sqm of B1 employment floorspace (including 3,000 sqm Enterprise Centre)" which allows for lesser amounts to come forward, for which there are other areas of the wider site also earmarked for non-residential uses. The point being that the appeal site is not the only part of the wider site that can deliver the commercial uses, flexibility in the permission allows for a lesser amount to come forward anyway, and the delivery of such is not linked with the phased delivery of housing within the site.
15. The appeal application and many of the appellant's submissions in this regard were made before the Hillside Judgement was handed down. Comments were also offered by the appellant in writing and verbally at the hearing in respect of the Hillside Judgement after it had been handed down. The interested party

⁴ *Pilkington v Secretary of State for the Environment* [1973] 1 WLR 1527, quotation at p 1532B

⁵ *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22; [2003] 1 WLR 983

⁶ *F Lucas & Sons Ltd v Dorking and Horley RDC* (1966) 17 P&CR 111

submitted representations (including a legal opinion) to the effect that the Hillside Judgement would be material. Furthermore, on its publication, they submitted another legal opinion to the effect that if the appeal were allowed and implemented (i.e. implementation being the trigger rather than the grant of permission), then they would no longer be able to rely on 2018 Permission beyond what had been built by that point in time. The legal opinion outlines that, in effect, if the appeal scheme were implemented, the interested party would have to halt building out their permission, because there is no indication that the Outline Permission or 2018 Permission were intended to be severable. The verbal indication of the interested party at the hearing was that their objection should stand if I agree with the points put to me.

16. If the appeal scheme were allowed and residential development were built upon the site, a conflict would arise with the requirements of Condition 2 of the 2018 Permission that requires substantial accordance with the Masterplan, Design and Access Statement and Development Framework Document. By its very nature, any form of residential development would substantially vary from the clear expectation of the site being developed for non-residential purposes. Though the relevant permission is not a full one, the decision notice, S106 and approved plans and documents are of particular significance. The Masterplan and Development Framework Document are named in condition 2 of the 2018 Permission and "substantial accordance" is required therewith. Such a condition and the wording it contains promotes these documents to one of greater substance than a truly 'indicative' plan otherwise typical of an outline scheme. Therefore, this 'drop in' scheme would prevent the achievement of substantial accordance with the condition of an extant permission still relied upon.
17. On the point of severability, my view is that the Hampton Park scheme was ultimately intended to be delivered as a comprehensive scheme in its entirety. The manner in which it is packaged as discrete sites, with some degree of flexibility as to the sum of its parts and the timing of delivery thereof is reflective of the need for pragmatism in delivering a multi-use and multi-unit scheme. However, in deciding whether to grant planning permission, the Council considered a range of factors relevant to the scheme as a whole, including the infrastructure required, its sustainability in planning terms and whether the public benefits of the proposed development as a whole outweighed any planning objections. In granting permission for such a scheme and in the absence of a clear contrary indication, the Council cannot be taken to have authorised the developer to combine building only part of the proposed development with building something different from - and inconsistent with - the approved scheme on another part of the site. Therefore, in my view, whilst the site is not physically integral to the remainder of the whole, the permission granted is not severable and a piecemeal 'mix and match' approach cannot be taken without affecting the 2018 Permission and Outline Permission, when their documents are read together.
18. Furthermore, the material reduction in the area available to deliver the 'non-residential uses' could jeopardise the delivery of these elements. Whilst it is simple to say that commercial space could be delivered on the remaining land available for such, there is little evidence to suggest that those areas could achieve a greater density of commercial development than was originally envisaged. Thus, there is a strong possibility that there would be a resultant material reduction in the non-residential uses. Though the viability of commercial uses on the appeal site is a matter raised by the appellant in this

appeal (addressed below), dealing with the inevitable loss of a commercial component of Hampton Park as a 'drop in' application risks undermining the whole concept of a sustainable urban extension, where residential uses are delivered alongside opportunities for employment, recreational opportunities and where a range of other facilities are available to meet every day community needs. A concern about the prospects of Hampton Park becoming a "*dormitory residential development*" have been raised by the Council and I am of the view that this proposal would be a step in that direction, particularly as no other non-residential elements have yet been delivered.

19. Prior to the Hillside Judgement being handed down, the appellant indicated that if necessary, another S73 application could be made in relation to conditions on the 2018 Permission to seek further variation to their terms and any approved plans or documents. This might be a means to secure an alternative distribution of the mix of authorised uses on the site. However, if this route were followed, the total number of dwellings approved within the Urban Extension as a whole would still be limited by the total referred to within the original description in the Outline Permission, i.e. up to 1260 dwellings. This principle is explained in the Finney⁷ judgement, which sets out that applications under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, that is, the description of the development for which the original permission was granted. In this context, any dwellings proposed instead of commercial uses would not be net additional, but part of the originally envisaged total number. Similarly, no entirely new land uses or development could be introduced under a S73 application.
20. The appellant has not submitted a S73 application and the nature of the appellant's relationship with the interested party gives rise to a concern about the complexities involved with such an approach and how the relevant S106 planning obligation could be adequately modified.
21. The submissions of the interested party also raise the prospect of an alternative route considered in the Hillside Judgement for another application to be made (either in outline or full), for the remainder of the Hampton Park site yet to be built, providing for a holistic alternative development, including the necessary modifications. As set out in (P74), "*...the position then would be that the developer has two permissions in relation to the whole site, with different terms, and is entitled to proceed under the second*". Setting aside that there would be more than one developer in this instance and absence of clarity about who would exercise the choice and how, this is not the nature of the appeal proposal before me.
22. I acknowledge the appellant's point that none of the relevant judgements entirely rule out 'drop in' applications. Also that each case must be treated on its own particular circumstances. However, in my view, there is an issue of severance and incompatibility of what is proposed and where in relation to the extant outline permission for Hampton Park. In the absence of evidence to the contrary, there is a risk that the appeal would compromise the ability to deliver the non-residential elements of Hampton Park, and, consequently, the scheme as a whole. A dormitory residential area without opportunities for employment is not what the sustainability of the Hampton Park Urban Extension was

⁷ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

premised upon, and nor would it assist with the Council's desire to minimise outward commuting from the area.

23. In conclusion, the effect of allowing the appeal would be to sever the site from the wider whole, and put at risk the outline permission for Hampton Park, which has at least three years remaining for reserved matters permission to be sought. In doing so, and without appropriate resolution, it may affect the interested party's ability to rely on the 2018 Permission to deliver the balance of the approved housing and other uses. With particular regard to the housing element, this could have consequent effects on housing delivery over the plan period against the requirements of Policy H SP1 of the Arun Local Plan (2018) (Local Plan). This Policy seeks to deliver at least 20,000 new homes within the district over the plan period.

Effects on Employment-Related Development

24. Policy EMP SP3 of the Local Plan sets out the importance of employment for peoples' health and well-being as part of essential elements of sustainable development. The Policy sets out the strategic employment allocations for the Plan area and includes a 2 hectare site at site (6) 'North Littlehampton'. Whilst a small component of the 74.5ha total area allocated by the Local Plan for employment purposes, the 2ha area allocated is to be delivered within the Hampton Park Urban Extension. The accompanying map to Policy EMP SP3 shows the appeal sites parts A and B forming part of the land allocated, along with another parcel of land to the east of around 0.56ha.
25. There is therefore a Policy expectation that the appeal site will deliver employment uses. The parties agreed that the principle of the appeal scheme would be in conflict with the Policy, but the appellant offered reasons why the considerations should be considered to outweigh the Policy conflict.
26. The appellant makes the point that Policy EMP SP3 (and its accompanying map) show the gross areas of the strategic employment land allocations and that *"...the actual floorspace and employment capacity of each site will be determined as development proposals are worked up in detail. Local environmental constraints, the eventual use class of occupiers and design issues will be important determinants for each site"*. It is highlighted that the allocation provides for a gross area in excess of the 2 hectares allocated. It is also noted that the areas identified on the Policies Map do not precisely tally with the areas granted for 'non-residential development' within the Hampton Park permissions. From the evidence, it appears that the appellant has counted around 1.22ha of land opposite/near the appeal site (made up of 0.9 and 0.32 hectare parcels of land) as having permission for non-residential uses and which still remains available for such. In addition, three other parcels near the appeal site have incorporated mixed uses, including a 0.28ha care home site, and 0.81ha and 0.56ha parcels with permission for retail and residential uses.
27. The appellant's main points are set out in the submitted '*Statement of Case of Employment Space and Development Viability*' (M J Hooper, July 2022), which essentially outlines that the 3 – 4 storey gateway office building which was inferred from the Masterplan, Parameter Plan and Building Heights Plan as being planned for this site, would now not be economically viable, and that following a dramatic change in the demand for such, the current and future need for offices would be met by the current stock of available space. Other issues such as the potential amenity impacts on near neighbours further adds

to the anticipation that the appeal site is unlikely to be desirable for the intended employment purposes. These points were reiterated verbally at the hearing, along with comments to the effect that the Council-commissioned 'Report on the Analysis of Change of Use Proposals' (Systra, October 2022) supports, rather than discredits, some of these assertions.

28. However, it is clear that the removal of the total c.1.72ha appeal site would make the ability to deliver c.2 hectares of employment development more challenging, given that only c.1.22 ha would remain available for employment use. Irrespective of the current economic context that may affect the demand for and viability of office developments, allowing the appeal scheme could put the remainder of the extant permission for Hampton Park at risk, including the balance of employment uses, and, for the reasons already given, I cannot change the description of development or the details of the approved plans and documents of those elements already approved. I thus conclude that the appeal scheme would harmfully affect the potential delivery of employment-related development in conflict with Local Plan EMP SP3, which is linked with expectations for Hampton Park as a whole.

Effects on Waste Infrastructure

29. The appeal site lies to the east of the existing Littlehampton Household Waste Recycling Centre (HWRC) and a modest area of land which, under the Outline Permission, would become an extension to the same. Existing housing also lies immediately to the south of the HWRC and recently-constructed housing forming part of Hampton Park has been constructed immediately to the south of the HWRC extension site.
30. Policy W2 of the West Sussex Waste Local Plan (2014) (Waste Local Plan) sets out that development will not be permitted where it would prevent or prejudice the use of existing waste management sites or infrastructure, except in a number of listed circumstances, none of which apply in this case. The preamble to the Policy explains that sensitive uses, (i.e. residential uses), should not be located adjacent to, or within suitable distances of waste infrastructure, such as landfill sites. It goes on to explain that the appropriate distances will vary dependant on the specific circumstances involved.
31. The Council's putative reason for refusal also refers to Policy QE SP1 of the Local Plan which seeks to ensure that the location of waste management uses is taken into consideration when assessing proposals for development sensitive to noise, light, odour and outputs to air. The stated objective of the Policy is to ensure that land allocated for these uses is protected and to ensure that occupiers are safeguarded from the impacts of incompatible land uses.
32. The proximity of the HWRC and its proposed extension are undeniably close to the appeal site and, in this context, as highlighted by the Council, harm to the amenities of future occupiers could arise from noise, light pollution, odour pollution or potentially dust. The appellant's point is that there are existing dwellings that would share the same or very similar relationship to the HWRC as those proposed, and thus, if there were any unacceptable impacts on residents that put the operation of the existing HWRC or the HWRC as extended in jeopardy, then these would already be a problem. I understand the precautionary approach adopted by the Council in seeking a Waste Infrastructure Safeguarding Statement, but from my assessment of the evidence and on the ground, I consider that the appeal proposal would not

result in future occupiers being exposed to greater effects from the HWRC or its extension than those who already live adjacent to it or those that will do so on completion of the already-committed development.

33. Accordingly, I consider that the proposal does not conflict with either Policy W2 of the Waste Local Plan or Policy QE SP1 of the Local Plan.

Other Matters

34. I note that the matters concerning highways, flood risk and surface water drainage have been satisfactorily resolved between the parties, subject to conditions where necessary. I have no reason to reach alternative conclusions in these regards.
35. The submitted unilateral undertaking (UU) dated 16 November 2022, made as a deed under S106 of the Town and Country Planning Act 1990, provides for 30% affordable housing, implementation of a Travel Plan and related monitoring activities and provision of highway works. The Council submitted a compliance statement addressing how the UU obligations met the test set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010, as amended). I consider that all obligations within the UU would be necessary and relevant to the development in scale and kind, either to offset the impacts of the additional residents, to make the development safe and acceptable in other respects, or to meet policy requirements of the Local Plan in respect of affordable housing.
36. The appellant raises the relevance of the Council's *'Interim Housing Statement 2021'* (February 2021) which outlines the measures adopted by the Council to address its acknowledged housing shortage (addressed below). However, the Statement clearly outlines that it does not apply to existing allocations within the Arun Local Plan area, and thus, cannot be taken to apply to the appeal site which forms a strategic employment allocation as part of the same.
37. I have also noted the appellant's points about the relevant policies of the Littlehampton Neighbourhood Development Plan (2014), along with those of the Local Plan and the timing of the respective adoptions of these plans relative to the publication of the current version of the National Planning Policy Framework (the Framework) (2021). Other than where addressed below, these are not decisive matters in the appeal.

Planning Balance and Conclusion

38. In relation to its harmful effects on delivering both housing and employment-related development, the appeal scheme is in conflict with the development plan when taken as a whole.
39. The agreed Statement of Common Ground sets out that the Council can only demonstrate a supply of housing land equating to 2.42 years' worth against the requirement in the Framework to demonstrate a five year supply, with the appropriate buffer.
40. Paragraph 11 of the Framework sets out a presumption in favour of sustainable development. In the context of decision making, this requires that development proposals that accord with an up-to-date development plan should be approved without delay, or where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-

date, granting permission unless either of two scenarios is relevant. Footnote 8 specifies that policies of a development plan should be considered out of date for housing proposals where the relevant authority cannot demonstrate a five year supply of housing land. Therefore, the presumption in favour of sustainable development, otherwise known as the 'tilted balance', is engaged.

41. The tilted balance indicates that permission should be granted unless (i) policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or (ii) where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
42. As there are no sites or assets of particular importance afforded protection by the Framework that would be affected by the proposals, the appeal scheme is not caught by Paragraph 11 d)(i). The consideration of the scheme against Paragraph 11 d)(ii) requires weighing the adverse impacts against the benefits.
43. I have considered the measures in the submitted UU. The travel plan measures are required to offset the impacts of additional residents and the highway works would be necessary to ensure their safety. Neither of these aspects would be true benefits of the scheme, and are thus of neutral effect on the overall planning balance.
44. There would be a degree of biodiversity net gain from measures outlined in the submitted Ecological Impact Assessment (Lizard, 2021) and required by way of planning condition. I attribute such benefits minor weight in favour of the scheme, commensurate with the scale of the measures outlined.
45. The greatest benefits the scheme could deliver would be the 71 dwellings, or at least up to that total number, of which 30% would be affordable homes of both social rented and intermediate sale tenures.
46. However, given my finding that allowing the implementation of the appeal scheme could jeopardise the delivery of the balance of the Hampton Park Urban Extension, which provides for a far greater number of dwellings, infrastructure, community and other non-residential uses, the 'up to 71' dwellings cannot attract the substantial weight that would otherwise be expected of such a quantum in the context of the housing land supply deficit. In this case, the totality of the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
47. For the reasons outlined, the tilted balance does not represent a material consideration that outweighs the conflict with the development plan or indicate that the decision should be made other than in accordance therewith.
48. The appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Jobbins
BSc (Hons) TP, Dip TP, Dip EM, MRTPI

Luken Beck Planning Consultants

Mr Mark Hooper
MBA FRICS

Avatar Partners

FOR THE LOCAL PLANNING AUTHORITY:

Mr Karl Roberts

Director of Growth

Ms Katie Sharp

Principal Planning Officer

INTERESTED PARTIES:

Ms Laura Jackson
BA (Hons), MA, MRTPI

Head of Planning -Persimmon Homes

Mr Will Allen

Persimmon Homes