



Appeal Decision

Inquiry Held on 4 and 5 July 2023

Site visit made on 4 July 2023

by S Edwards MA MATCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Appeal Ref: APP/P1425/W/23/3316217

Land off High Street, Barcombe Cross (Easting:541847 Northing:115720)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to details required by a condition of a planning permission.
 - The appeal is made by Rydon Homes Limited against the decision of Lewes District Council.
 - The application Ref LW/22/0153, dated 3 March 2022, sought approval of details pursuant to condition No 2 of a planning permission Ref LW/21/0530, granted on 12 August 2021.
 - The application was refused by notice dated 8 December 2022.
 - The development proposed is 'Approval of Reserved Matters Application for AMENDED PLANS - Approval of reserved matters application for details of appearance, landscaping, layout and scale relating to outline approval LW/21/0530, for the erection of 26 dwellings'.
 - The details for which approval is sought are: appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely appearance, landscaping, layout and scale details submitted in pursuance of condition No 2 attached to planning permission Ref LW/21/0530, granted on 12 August 2021, in accordance with the terms of the application Ref LW/22/0153 and the plans submitted with it, and subject to the conditions in Annex A to this decision.

Application for costs

2. Prior to the Inquiry an application for costs was made by Rydon Homes Limited against Lewes District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Reserved Matters application subject to this appeal was refused for two reasons. A Report to Lewes Planning Application Committee dated the 19 April 2023 explained that the application of appropriately worded conditions would overcome the concerns previously raised by East Sussex County Council, and the risk of flooding would be mitigated to an acceptable degree. On this basis, the Local Planning Authority did not maintain the second reason for refusal relating to surface and foul water management. This was made clear by the Council prior to the Case Management Conference (CMC) held on the 27 April 2023.

Main Issue

4. Given the above, I consider that the main issue is the effect of the proposal on the character and appearance of the area.

Reasons

The site and surrounding area

5. The appeal site comprises an enclosed field located on the northern side of the High Street, towards the western edge of Barcombe Cross. There are important changes in level across the site, including a rise of approximately 5.5 metres from west to east. The site is contained by a tree line along its western and northern boundaries, together with trees on the northern end of the eastern boundary, whilst a mature hedgerow defines the southern boundary. The field is otherwise characterised by its openness to the south-west, as seen on the approach to the village.
6. The appeal site lies within the setting of the Barcombe Cross Conservation Area, which does not encompass the whole village, but focuses mainly on the historic core around the crossroads and also includes modern housing. The pattern of development along the High Street is predominantly characterised by buildings positioned close to the road and in many instances, small landscaped areas maintained to frontages.
7. The staggered arrangement of the buildings, together with the variety of architectural styles present within the Conservation Area, reflect the strong historic character of a settlement which has developed organically over the centuries. Given the above, I find that the significance of the Conservation Area resides primarily in the rich collection of historic buildings and intimate, rural setting of this hilltop settlement, surrounded by open countryside.
8. The site is surrounded by the Barcombe Cross Conservation Area on its western, southern and eastern sides, and represents a notable feature within the setting of this designated heritage asset. By virtue of its undeveloped character, there is no doubt that the site makes a positive contribution to the setting of the Conservation Area.

Planning policy context and history

9. It is important to appreciate the context in which outline planning permission was granted for this residential scheme on the site. Policy BA02 of the Lewes District Local Plan Part 2 – Site Allocations and Development Management Policies¹ (the LPP2) allocates the site for residential development to provide approximately 25 net additional dwellings. The development of this allocated site is subject to compliance with all appropriate development plan policies and a number of specific criteria.
10. In August 2021, the Council granted outline planning permission for the erection of up to 26 dwellings (including 10 affordable homes) on the site subject to this appeal, together with associated development and access off the High Street. Whilst the application was accompanied by indicative layout plans, all other matters (appearance, landscaping, layout and scale) were reserved for subsequent determination.

¹ February 2020.

11. Bringing these points together helps defining the baseline for the purposes of this reserved matters proposal. The loss of this undeveloped field and the principle of building up to 26 dwellings with associated infrastructure on the site, as envisaged by Policy BA02 of the LPP2 were accepted by the Council when outline planning permission was granted, thus confirming that this number of dwellings could be satisfactorily accommodated on the site. This is not however to say that the appearance, landscaping, layout and scale are necessarily acceptable in all circumstances.

Effect of the proposal

12. The layout previously shown on the indicative plans submitted as part of the outline scheme has been significantly altered as part of the reserved matters application. Some of the dwellings would be positioned closer to the High Street frontage. The area of open space previously shown to the front of the site as part of the outline scheme is proposed to be relocated towards the rear of the site, and would also incorporate a play area.
13. The concerns of the Council relate primarily to the frontage buildings and the effect that this would have on the rural character of the surrounding area. In that respect, my attention has been drawn to the explanatory text to Policy BA02, which states that 'as part of any development, new properties should be set back from the High Street, be no more than two storeys and 'blocks' of development avoided to help retain a sense of transition into the village from the surrounding area'.
14. Whilst the Courts² have previously confirmed that the supporting text is 'plainly relevant to the interpretation of a policy to which it relates', 'it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy'. In *Cherkley*, the Court of Appeal could not envisage a situation where a development that accorded with the policies in the local plan could be found not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. In my view, this is particularly relevant to the appeal scheme, given that the reference to a "set back from the High Street" being required as part of the development is only found in the supporting text, and is not explicitly mentioned in Policy BA02.
15. In any event, the proposed buildings fronting the High Street would be set back from the road, albeit to a lesser degree than proposed as part of the outline scheme. As shown on the proposed plans, the frontage dwellings would be set back from the road, behind small areas of semi-private front gardens and the existing mature hedgerow. To my mind, the proposed layout would be consistent with the varied and staggered building lines found within the village, which would thus ensure that the appeal scheme integrates satisfactorily with the surrounding streetscape and reflects its village setting.
16. The buildings would all be two-storey in height and the scale of development would be consistent with the aims of Policy BA02. I note the points made by interested parties regarding the siting of the frontage buildings in relation to the road level, but with the degree of set back proposed, this would not be significantly different from other properties along the High Street.

² Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC & Anor [2014] EWCA Civ 567 (07 May 2014).

17. Views of the site from the railway bridge will inevitably change from an undeveloped field to a residential development. As a consequence of the site's allocation and the grant of outline planning permission, it is accepted that the sense of openness which presently characterises the site will be diminished. In that respect, the degree of set back from the road frontage would have to be significantly greater than what is proposed here or was shown as part of the outline scheme to preserve some form of openness. More critical to my mind is the sense of transition from the village into the wider countryside, which the appeal scheme has sought to achieve, having regard to the pattern of development and vernacular architecture which define Barcombe Cross, but also by placing a strong emphasis on the importance of soft landscaping.
18. The design of the proposed dwellings would reflect the built heritage and local vernacular which characterise Barcombe Cross. This, together with the retention of trees, hedgerows and the implementation of a soft landscaping scheme, would ensure that the development successfully integrates with its surroundings, whilst contributing to the sense of transition from the edge of the village into the wider countryside.
19. At the Inquiry, the Council confirmed that their concerns relate solely to the effect of the development on the rural setting of the village. It was accepted that there would be no harm caused to the special interest of the Conservation Area, other than that caused by the loss of an undeveloped field within the setting of this designated heritage asset, as identified as part of the assessment of the outline scheme. In reflecting the traditional vernacular, the appeal scheme would be respectful of the character, appearance and setting of the adjacent Barcombe Cross Conservation Area, as per the requirements of Policy BA02.
20. The parties have referred to a subsequent Reserved Matters application³, which shows dwellings being set back further from the High Street frontage. However, this application merely shows that there may be several, suitable ways of developing the site. In any event, it is of limited relevance to the determination of this appeal, because I consider that the details shown as part of the proposal before me are acceptable in planning terms, regardless of potential alternatives.
21. For the foregoing reasons, and having regard to the layout and siting of the proposed dwellings in relation to the High Street, I am satisfied that the appeal scheme would respect the character, appearance and rural setting of Barcombe Cross, and would therefore accord with the requirements of Policy BA02 and the design aims of Policy DM25 of the LPP2. Moreover, I find no conflict with Policies CP2, CP10 and CP11 of Lewes District Local Plan Part 1 – Joint Core Strategy 2010-2030⁴ (the LPP1). Amongst other things, these seek to ensure that development proposals are of a high-quality design and reflect the character of the surrounding area, to conserve and enhance the natural, built and historic environment of the District.

Other Matters

Foul and surface water drainage

³ Local Planning Authority Reference LW/23/0090.

⁴ May 2016.

22. As noted above, the Council chose not to defend the Reason for Refusal related to foul and surface water drainage prior to the CMC. There were however concerns raised by interested parties regarding the effect of the proposal on foul and surface water drainage, notably by reason of the changes to the layout proposed as part of the Reserved Matters application, which I have had regard to. At the Inquiry, the appellant's witness explained how foul and surface water drainage would be dealt with as part of the development.
23. The site lies within Flood Zone 1 and is as such at low risk of tidal and fluvial flooding. As noted within the Case Officer's report, there are no record of significant surface water drainage issues within the site itself, but it is noted that Willow Cottage and the area further west known as Bridgelands are identified by the Environment Agency as being at high risk of surface water flooding, and it is therefore critical that the development of the site does not increase flood risk elsewhere.
24. As confirmed by site investigation works, ground conditions are not suitable for the implementation of infiltration drainage systems. At the Inquiry, the appellant's witness also explained that the site's topography presents a good opportunity for the management of surface water, using the adjacent watercourse. The appeal scheme would therefore utilise surface water attenuation facilities, including a large basin in the south-western corner of the site that would store and release surface water, and a swale in the biodiversity protection area.
25. The capacity of the attenuation basin has been designed to make appropriate allowances for climate change, and runoff from the proposed hard surfaced areas would be restricted to a single greenfield, mean annual flood rate, which was agreed with the Lead Local Flood Authority (LLFA) and approved as part of the outline scheme. Furthermore, the basin would be fitted with an impermeable liner to ensure that it remains isolated, to prevent groundwater from entering this attenuation feature.
26. Foul water is proposed to be discharged to a public sewer situated within the High Street, using a foul pumping station located in the site's western margin. It is unclear at this stage whether the development would require the installation of a 'Type 2' or 'Type 3' pumping station, and whether the pumping station and associated network will be adopted by the Sewerage Undertaker, but a management company would otherwise be set up to maintain the installation. The appellant's submissions have clearly demonstrated that either solution can be accommodated on the site, and that suitable access could be provided to maintain the installation.
27. The effects of constructing up to 26 dwellings and associated impermeable surfaces on what is currently an undeveloped field were assessed as part of the outline planning application. Both the LLFA and Southern Water were consulted and raised no objection to the proposals, subject to the imposition of suitably worded conditions.
28. I appreciate that interested parties have genuine concerns about whether the surface water and foul drainage strategy would be capable of operating satisfactorily. However, a number of conditions were imposed as part of the outline planning application, to ensure that further surface water and foul drainage details, as well as management and maintenance arrangements, are submitted to and approved by the Local Planning Authority.

29. The appellant's submissions clearly demonstrate that the proposed layout can accommodate satisfactorily foul and surface water drainage. Having regard to the evidence submitted as part of the appeal and presented at the Inquiry, I have no reasons to come to the view that the proposal would increase flood risk elsewhere, adversely affect neighbouring residential properties, or lead to the discharge of sewage into watercourses.

Other concerns

30. Other concerns have been raised by interested parties, including reservations regarding the environmental impact of the development and highway safety implications, which I have noted. However, I am satisfied that these matters were appropriately assessed as part of the outline application.

Conditions

31. A draft list of conditions was submitted during the Inquiry. These were discussed and to a large extent agreed by the Council and the appellant prior to the Inquiry. I have considered the suggested conditions, making minor amendments where necessary, to ensure compliance with the tests as set within the Framework and the National Planning Practice Guidance. The appellant has confirmed his agreement to the suggested pre-commencement conditions.
32. A condition requiring that the development is carried out in accordance with the approved plans is considered necessary to provide certainty. The suggested commencement condition is not considered necessary, as this is already covered by the decision to grant outline planning permission.
33. In order to ensure that the quality of the design is carried through into its construction and to preserve the setting of the Conservation Area, it is necessary to add a condition requiring details of the external materials to be approved by the Council. A condition requiring some of the windows to be obscure glazed is needed to protect the living conditions of neighbouring residents.
34. I shall also impose conditions requiring details of the proposed car and cycle parking arrangements to be approved by the Council, in the interests of highway safety and to promote sustainable modes of travel. The condition specifying the size of the parking spaces is not considered necessary, as this can be addressed appropriately as part of the car parking condition referred above.
35. Some of the suggested conditions could have been imposed as part of the decision to grant outline planning permission, but these are considered necessary in the interest of public safety and to prevent damage to the environment. I shall therefore add the suggested pre-commencement condition requiring the submission of an Unexploded Ordnance risk assessment, and a condition to address potential contamination. Conditions requiring details of the surface water drainage scheme and the attenuation pond to be approved by the Local Planning Authority are considered necessary to ensure that surface water/sewage is dealt with effectively.

Conclusion

36. The appeal scheme would make a notable contribution towards the delivery of market and affordable homes, in an area which currently experiences significant housing land supply issues. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed, and the submitted details of appearance, landscaping, layout and scale submitted in pursuance of condition No 2 attached to the original grant of outline planning permission, should be approved.

S Edwards

INSPECTOR

Richborough

APPEARANCES

FOR THE APPELLANT:

Richard Turney, of Landmark Chambers. Instructed by Rydon Homes Limited

He called:

Peter Raynier	Principal Director of Planning at DMH Stallard
Jonathan Fox	Director at OSP Architecture
Robert Bourn	Managing Director at Orion Heritage Ltd
Paul Daykin	HSP Consulting Engineers Limited

FOR THE LOCAL PLANNING AUTHORITY:

Rowan Clapp, of Cornerstone Barristers. Instructed by Lewes District Council

He called:

Marc Dorfman	Senior Specialist Planning Officer
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INTERESTED PARTIES:

Dr John Kay	CPRE Sussex
Andy Holman	Barcombe Parish Council
Robin St. Clair Jones	Local resident
Isabelle Linington	Local resident, former district Councillor
Rosalyn St-Pierre	Local resident
Nigel Saxby	Local resident
Pauline Cranfield	Local resident

DOCUMENTS HANDED UP TO THE INQUIRY

- ID1 Opening Statement on behalf of the Local Planning Authority
- ID2 Comments by Dr John Kay, CPRE Sussex
- ID3 Proposed conditions
- ID4 Signed Statement of Common Ground
- ID5 Appellant's Opening Submissions
- ID6 Representation made by Mr Holman on behalf of Barcombe Parish Council
- ID7 Barcombe Residents (Mr Bryce) Statement of Evidence
- ID8 Council's Reply to the Applicant's Application for Costs
- ID9 Closing Submissions on behalf of the Local Planning Authority
- ID10 Appellant's Closing Submissions and Costs Reply

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ANNEX A: SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates shall be carried out in accordance with the approved plans set out in Annex B to this decision.
- 2) Prior to the commencement of development an Unexploded Ordnance (UXO) risk assessment must be submitted to and approved in writing by the Local Planning Authority and construction works carried out in adherence to any recommendation made within the assessment.
- 3) No development shall take place on site until full details of surface water drainage have been submitted to and approved in writing by the Local Planning Authority. All development shall be undertaken in accordance with the approved details and no building shall be occupied until the approved works have been completed. The surface water drainage system shall be retained as approved and maintained thereafter.
- 4) Prior to the application of any external finish (including window and door frames), a full schedule of external material finishes and samples to be used on the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in full accordance with the approved schedule and samples.
- 5) The development to which this permission relates shall not be occupied until parking areas have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. The areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
- 6) The development to which this permission relates shall not be occupied until cycle parking areas have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. The areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
- 7) If, during the course of construction of the approved development, any contamination not previously identified is found to be present at the site, then no further development shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The approved remediation strategy shall be implemented before the development is resumed or continued.
- 8) The first-floor windows on the southern elevation of plot 23 and the eastern elevation of plot 26 shall be obscure glazed and fixed shut at all times, other than any parts that are over 1.7 metres above the finished floor level of the rooms that they serve.
- 9) The detailed design of the attenuation pond should be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1 metre unsaturated zone between the base of the ponds and the highest records groundwater level. If this cannot be achieved, details of measures to be taken to manage the impacts of high groundwater shall be submitted to and approved in writing by the Local Planning Authority. The

design of the attenuation pond shall include a knee-high post and rail boundary fence, a warning sign and life buoy ring. Details shall be submitted to and approved in writing by the Local Planning Authority. The attenuation pond shall be implemented in accordance with the approved details prior to occupation of the development, and maintained in a good condition for the lifetime of the development.

END OF SCHEDULE

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ANNEX B: SCHEDULE OF APPROVED PLANS

<u>Plan Type</u>	<u>Date Received</u>	<u>Reference:</u>
Location Plan	2 nd March 2022	1057-RM-01
Tree Works Plan	5 th May 2022	1057-RM-03 Rev B
Parking Allocation Plan	5 th May 2022	1057-RM-04 Rev B
Refuse and Recycling Layout	5 th May 2022	1057-RM-05 Rev B
Fire Tender Tracking Plan	5 th May 2022	1057-RM-06 Rev B
Ground Floor Layout	5 th May 2022	1057-RM-07 Rev B
Road Adoption Plan	5 th May 2022	1057-RM-08 Rev B
Boundary Treatment Plan	5 th May 2022	1057-RM-09 Rev B
Hard Landscaping Layout	5 th May 2022	1057-RM-10 Rev B
Soft Landscaping Layout (sheet 1)	2 nd March 2022	1057-RM-11
Soft Landscaping Layout (sheet 2)	2 nd March 2022	1057-RM-12
Affordable Housing Plan	5 th May 2022	1057-RM-13 Rev A
Existing and Proposed Levels (sheet 1)	31 st May 2022	1057-RM-14 Rev B
Existing and Proposed Levels (sheet 2)	31 st May 2022	1057-RM-15 Rev B
Air Source Heat Pump Locations	5 th May 2022	1057-RM-16
Coloured Site Layout	25 th October 2022	22080-C201 Rev A
Dwelling Material Distribution Plan	25 th October 2022	22080-C203
Proposed Site Layout	25 th October 2022	22080-P201
Coloured Street Scenes AA-CC	25 th October 2022	22080-C204
Coloured Street Scenes DD-FF	25 th October 2022	22080-C205
Plot 1-3 Plans and Elevations	25 th October 2022	22080-P210
Plot 4 Plans and Elevations	25 th October 2022	22080-P211
Plot 5 Plans and Elevations	25 th October 2022	22080-P212
Plot 6 Plans and Elevations	25 th October 2022	22080-P213
Plot 7 Plans and Elevations	25 th October 2022	22080-P214
Plot 8 Plans and Elevations	25 th October 2022	22080-P215
Plot 9 Plans and Elevations	25 th October 2022	22080-P216
Plot 10 Plans and Elevations	25 th October 2022	22080-P217
Plot 11 Plans and Elevations	25 th October 2022	22080-P218

Plot 12 Plans and Elevations	25 th October 2022	22080-P219
Plots 13-16 Plans and Elevations	25 th October 2022	22080-P220
Plots 17-20 Plans and Elevations	25 th October 2022	22080-P221
Plots 21 & 22 Plans and Elevations	25 th October 2022	22080-P222
Plot 23 Plans and Elevations	25 th October 2022	22080-P223
Plot 24 -26 Plans and Elevations	25 th October 2022	22080-P224

Richborough



Costs Decision

Inquiry Held on 4 and 5 July 2023

Site visit made on 4 July 2023

by S Edwards MA MATCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Costs application in relation to Appeal Ref: APP/P1425/W/23/3316217
Land off High Street, Barcombe Cross (Easting:541847 Northing:115720)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rydon Homes Limited for a partial or full award of costs against Lewes District Council.
 - The inquiry was in connection with an appeal against the refusal to grant approval of details required by a condition attached to a grant of outline planning permission.
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Decision

1. The application for a full award of costs is allowed in the terms set out below.

The submissions for Rydon Homes Limited

2. The application for costs was made in writing. In summary, the applicant considers that it was unreasonable for the Council to refuse to approve the reserved matters application on the basis of the first reason for refusal, with regard to the effect of the development on the street scene and rural setting of Barcombe Cross.
3. The reserved matters application was recommended for approval, as set out in the Case Officer's Report, and had the support of the Council's Landscape Architect and Conservation Officer. In that respect, the applicant has referred to the pre-application advice which he sought from the Council, and which was followed to design the appeal scheme. The applicant also considers that there are no prescriptive requirements within the development plan in respect of the relationship between the development of this allocated site and the High Street frontage.
4. For these reasons, the applicant is of the view that the Council acted unreasonably in failing "to produce evidence to substantiate each reason for refusal". The applicant considers that members of the Planning Committee simply disregarded the Case Officer's recommendation and made "vague, generalised or inaccurate assertions" about the impact of the proposal, which were "unsupported by any objective analysis". In doing so, the Council prevented or delayed a development "which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations". Furthermore, the applicant argues that the Council's submissions fail to substantiate this particular reason for refusal.
5. The applicant also considers that the Council should not have refused the reserved matters application on surface and foul water management grounds,

given that the principle of accommodating satisfactory drainage had already been addressed as part of the outline application. The Council subsequently accepted that this reason for refusal could not be sustained and should accordingly be withdrawn, despite the applicant having submitted no additional information.

6. The applicant thus argues that the Council acted unreasonably in refusing to approve the reserved matters application for reasons that should already have been considered at outline stage, on grounds capable of being dealt with by condition, and despite the absence of objection from the Lead Local Flood Authority.

The response by Lewes District Council

7. The rebuttal to the costs application was made in writing. In summary, the Council argues that members of the Planning Committee are entitled to depart from the recommendation of Officers. In this instance, this was done after the recommendation was discussed at length by the Planning Committee. The Council also explains that whilst the applicant entered into pre-application discussions with the Council, this is not a guarantee of planning permission, as the Planning Committee was the ultimate decision-maker and thus considered the application on its merits. The Council is notably referring to a Post Committee Delegated Report, suggesting that the Reserved Matters application could be refused "if 'frontage development' is unacceptably intrusive".
8. Rather than making generalised or inaccurate assertions about the proposal, unsupported by any objective analysis, the Council explains that members of the Planning Committee took into account of the supporting text to the relevant policy, which was not addressed within the Case Officer's Report. Members simply exercised their planning judgment and, having regard to the development plan and other material considerations, found that this was not a proposal which could be permitted.
9. With regard to the second reason for refusal, the Council explains that information on flooding and drainage matters was only provided to members shortly before their Committee meeting, and they had therefore little time to consider this additional evidence or scrutinise it. The Council argues that the decision to refuse the application on these grounds was an entirely reasonable approach, particularly as this reason for refusal was subsequently withdrawn prior to the Case Management Conference, after the Council had taken the time to review the case and ensure that only relevant issues were before the Inspector. Moreover, the Council notes that the applicant's proof of evidence on flooding and drainage matters was produced at a time when the matter was no longer in dispute between the main parties. Accordingly, this expense cannot be attributed to the Council's conduct in the appeal process.

Reasons

10. The national Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG adds that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny

on the planning merits of the case, not to add to development costs through avoidable delay.

11. Members of the Planning Committee are not bound to accept the Case Officer's recommendation and are entitled to come to a different decision, provided that they do so whilst relying on substantive planning grounds. In respect of the first Reason for Refusal, the Council's submissions rely to a large extent on the supporting text to Policy BA02 of the Lewes District Local Plan Part 2 – Site Allocations and Development Management Policies (February 2020), which notably states that "as part of any development, new properties should be set back from the High Street".
12. However, and as I have explained in my Decision Letter, the Courts have previously made it clear that whilst supporting text is "relevant to the interpretation of a policy to which it relates, (...) it does not have the force of policy and cannot trump the policy". Attempts to substantiate the first reason for refusal were not sufficient or convincing. This is a site that was allocated for residential development as part of the plan-making process and where outline planning permission has already been granted for the construction of up to 26 dwellings.
13. The Council must have therefore satisfied itself that this quantum of development could be satisfactorily accommodated on the site, otherwise it is difficult to understand why outline permission was granted. In doing so, it would have also been accepted that as a result of the loss of this undeveloped field and the construction of a residential scheme, the site's contribution to the rural edge of the village and to the setting of the Barcombe Cross Conservation Area would be eroded.
14. Whilst the outline scheme showed properties being set further back from the High Street, the applicant was not bound by this layout, as this formed part of the matters which had been reserved for subsequent determination. The applicant produced compelling evidence setting out the design rationale of the appeal scheme and how it has evolved, following negotiations with the Council's Officers.
15. The fact that the applicant has subsequently submitted a revised Reserved Matters application with properties being set back from the High Street is no indication that the Council's decision was justified or reasonable. It only serves to illustrate the applicant's commitment to the development of this allocated site.
16. With regard to the second reason for refusal, I have been presented with no convincing evidence explaining why members of the Planning Committee had not had sufficient time to consider additional information on flooding and drainage matters that had been submitted in support of the application. Even if that was the case, it remains unclear why, having regard to the presented evidence, the Council decided to refuse the Reserved Matters application rather than pursuing other options.
17. Whilst this reason for refusal was withdrawn prior to the Case Management Conference in April 2023, this was not done following the submission of new evidence by the applicant, in order to overcome the Council's concerns. The fact that the Council accepted the matter could be addressed through the

imposition of conditions clearly indicates in my view that the application should not have been refused on these grounds in the first place.

18. For the reasons detailed above, I consider that the Council's decision has resulted in preventing or delaying a development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and other material considerations. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified in this instance.

Costs Order

19. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Lewes District Council shall pay to Rydon Homes Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to Lewes District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S Edwards

INSPECTOR