



Appeal Decision

Hearing held on 17 October 2023

Site visit made on 17 October 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/C3810/W/23/3323858

Land to the rear of Meadow Way, Westergate

Grid Ref Easting: 493620, Grid Ref Northing: 104816

- 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 Mr Nick Keeley, Gleeson Land against the decision of Arun District Council.
- The application Ref AL/178/22/OUT, dated 6 December 2022, was refused by notice dated 26 April 2023.
- The development proposed is described in the application form as: Outline planning application with all matters reserved, other than principal means of access and demolition of 24 Meadow Way, for the construction of up to 89 residential dwellings, with access taken from Meadow Way, together with the provision of open space, landscaping and associated infrastructure.

Decision

1. The appeal is allowed and planning permission is granted for outline planning application with all matters reserved, other than principal means of access and demolition of 24 Meadow Way, for the construction of up to 89 residential dwellings, with access taken from Meadow Way, together with the provision of open space, landscaping and associated infrastructure at Land to the rear of Meadow Way, Westergate (Grid Ref Easting: 493620, Grid Ref Northing: 104816) in accordance with the terms of the application, Ref AL/178/22/OUT, dated 6 December 2022, subject to the attached Schedule of Conditions.

Application for costs

2. An application for an award of costs was made at the Hearing by Mr Nick Keeley of Gleeson Land against Arun District Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application is made in outline, with all matters reserved apart from access. The proposed plans and the description of the development proposed all make it clear that vehicular access to the appeal site would be constructed between 23 Meadow Way and 1 Lamorna Gardens, in place of 24 Meadow Way. The existing access from Hook Lane is shown to be retained as a cycle/pedestrian access only. These form the access matters under consideration, as shown on the proposed Parameter Plan¹. The Highways Technical Note on Hook Lane Access Feasibility² does not form part of a proposal to provide vehicular access to the appeal site from Hook Lane.

¹ Drawing ref: 1318.03

² Appendix 1 of the appellant's Hearing Statement, by Motion, dated May 2023

4. The Illustrative Masterplan³ provides a potential layout of the proposed development. It is merely illustrative. As the application is in outline with all matters reserved apart from access, other matters such as the appearance, landscaping, layout, and scale of the proposal are not under consideration. Gaps in the southern boundary hedgerow are shown on that illustrative plan, but these are not shown on any of the other plans and do not form part of the proposal before me.
5. Prior to the Hearing, the Council withdrew its second reason for refusal, which concerned the effect of the demolition of 24 Meadow Way on bats. This followed receipt of the appellant's Hearing Statement, which included a Bat Emergence Survey⁴.
6. A copy of a completed legal agreement entered into by the relevant parties was provided after the close of the Hearing. The Council confirmed that it addresses the fourth and fifth reasons for refusal concerning provision of affordable housing and an education transport contribution.
7. The Council's decision notice does not refer to the suitability of the appeal site for housing, with regard to the development plan's spatial strategy for the location of housing. Nevertheless, it was agreed between the main parties that Policy C SP1 of the Arun Local Plan 2011-2031 (2018) (the ALP) and Policy EH1 of the Aldingbourne Neighbourhood Development Plan 2019-2031 (2021) (the ANDP) are amongst the most important development plan policies for determining the application, and I see no reason to find otherwise. I shall address this in the first main issue.

Main Issues

8. Taking the above and all other matters raised into account, the main issues are:
 - Whether the appeal site would be suitable for housing, with particular regard to the development plan's spatial strategy for the location of housing;
 - The effect of the proposed development on best and most versatile agricultural land (BMVAL); and
 - The effect of the proposed development on the living conditions of occupants of nearby residential properties, with particular regard to noise and disturbance.

Reasons

Location of Housing

9. The appeal site is an arable field and an adjacent residential property. The field has an existing access used by agricultural vehicles from Hook Lane. It is roughly rectangular in shape and is skirted by trees and hedgerows. Open land lies to the north. A large garden borders the appeal site to the west, with a short row of houses further beyond. The rear gardens of houses along Meadow Way abut the eastern boundary of the appeal site, and a public footpath runs the length of its southern boundary, linking Meadow Way and Hook Lane. Rear

³ Drawing ref: 1318.02

⁴ By The Ecology Partnership, dated 16 May 2023

- gardens of dwellings in Lamorna Gardens and the fronts of dwellings accessed from Hasler Grove, Toop Gardens, and Hook Lane line the southern side of the public footpath.
10. The appeal site is therefore surrounded by housing development to its east and south and a small amount of sparse residential development to its west. It forms an undeveloped parcel of agricultural land at the southern end of Westergate. The village generally comprises development either side of Westergate Street (A29), close to neighbouring villages and smaller settlements, surrounded by countryside.
 11. The appeal site lies outside the 'Built-Up Area Boundaries' defined in the ALP. Policy C SP1 of the ALP states that land outside those boundaries will be defined as countryside and will be recognised for its intrinsic character and beauty, where development will be permitted if it complies with various criteria. None of those criteria apply to the proposal and it is common ground that the proposal conflicts with Policy C SP1.
 12. Owing to its position alongside established housing on more than a single side, its modest size, and its contained nature, I do not consider that the field makes an important contribution to the intrinsic character or beauty of the countryside surrounding Westergate. The Council has not suggested otherwise. The proposal would not harm local landscape character, the wider setting of the South Downs National Park, or the character of any settlements. Whilst it would comprise a significant number of dwellings, the proposal would not greatly affect the discernible urban boundary of Westergate.
 13. Policy EH1 of the ANDP states that development of land located to the west of Westergate Street and outside of the Built-Up Area Boundaries will not be supported. It then states that where there is a demonstrable shortfall of housing land supply, development outside the Built-Up Area Boundaries must meet 7 criteria, otherwise it will be resisted. It is common ground between the main parties that there is a shortfall of housing land supply in the district and that the proposed development would accord with Policy EH1.
 14. I have considered the comments of Aldingbourne Parish Council (the Parish Council) which explain that the development would not accord with Policy EH1 of the ANDP, and that the ANDP has allocated a site for the development of 38 houses elsewhere in Westergate. However, Policy EH1 does not place a blanket ban on development outside the Built-Up Area Boundaries to the west of Westergate Street. This is clear from the supporting text to the policy, which explains why that land has been considered unacceptable for development on the basis of evidence available at the time the ANDP was adopted. It explains that the significant adverse effects of development on land previously considered unacceptable in this location would need to be satisfactorily addressed such that the benefits of development would be evident to the local community. Those matters would be addressed if the policy's 7 criteria are complied with.
 15. The development would accord with the first 6 criteria of Policy EH1 of the ANDP. Specifically, its scale, which would include 30% affordable housing, would be proportionate to the district's housing supply shortfall and the local housing needs of the Parish. I accept that the appellant is not a builder but that is not unusual and in itself does not mean the housing could not be delivered in the short-term. I have already found that the location of the proposal would

not harm landscape character or that of settlements. As addressed below, it would also accord with dark skies policies and matters raised by criteria (iv) to (vi) of Policy EH1. However, the development would lie within 50 metres of a biodiversity corridor which appears likely to be used by roosting, feeding, or commuting bats. In that regard, the proposal would fail to accord with criterion (vii) of Policy EH1.

16. The Council accepted that because it cannot demonstrate a 5-year housing land supply, it will allow housing development in the countryside, adjacent to the Built-Up Area Boundaries. I am also aware of the Council's previous informal advice⁵ that there was no objection in principle, considering its 5-year housing land supply position.
17. Bringing these matters together, the location of the proposed development would not accord with the spatial strategy for housing within the district, which indicates that it would be unsuitable for housing. However, it is directly adjacent to the Built-Up Area Boundary and other housing development, in a location described as sustainable by the Council on account of its proximity to local services and transport links. The appeal site is the type of location where the Council accepts that housing development will be permitted due to there being a demonstrable shortfall of housing land supply. For these reasons, I assign only moderate weight to the conflict with Policy C SP1 of the ALP. I shall discuss the weight to be assigned to the conflict with Policy EH1 of the ANDP in the final balancing exercise.

Agricultural Land

18. The arable field forming part of the appeal site measures approximately 3.8 hectares in area and is classed as grade 2 agricultural land, which is defined as BMVAL at Annex 2 of the National Planning Policy Framework (the Framework). Grade 2 agricultural land is described as very good with minor limitations that affect crop yield, cultivations or harvesting.
19. Policy SO DM1 of the ALP states that the use of BMVAL for any form of development not associated with agriculture, horticulture or forestry will not be permitted unless need for the development outweighs the need to protect such land in the long term. The policy goes on to provide 3 scenarios where the requirement to protect BMVAL can be outweighed, and explains that where development is permitted, it should, as far as possible, use the lowest grade of land suitable for that development and only where 4 criteria are met. This is more restrictive than the Framework, which sets out at paragraph 174(b) that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the economic and other benefits of BMVAL, amongst other things.
20. It is common ground that the development would result in the loss of BMVAL, contrary to Policy SO DM1 of the ALP. However, it is accepted by the Council that BMVAL may well have to be used to provide housing within the district because of its housing land supply position and the large extent of the district which comprises BMVAL. Given that Policy SO DM1 is more restrictive than the Framework, and the high likelihood that BMVAL will have to be used to provide housing within the district, it is appropriate to assign only moderate weight to the conflict with Policy SO DM1 in this particular case.

⁵ The appellant's Appendix 6: Email dated 17 March 2023

21. Policy EH3 of the ANDP seeks to restrict development unrelated to the diversification of agricultural enterprise on BMVAL identified on a specific map, unless the need for the development clearly outweighs the harm. It is unclear whether the appeal site is identified on the map referred to by the policy. Nevertheless, the Council's 5-year housing land supply position and its acceptance that BMVAL may well have to be used to meet housing need in the district, demonstrate that the need for up to 89 dwellings clearly outweighs any harm caused by the loss of grade 2 agricultural land. Therefore, even if the appeal site is identified on the map, the proposal would accord with Policy EH3.

Living Conditions

22. The Council confirmed during the Hearing that it is concerned with the effect of the proposed access road on the living conditions of residents at 23 Meadow Way and 1 Lamorna Gardens, with particular regard to noise and disturbance which would be experienced in the rear gardens of those properties. I have also considered points made by other neighbouring residents who are concerned that the proposal would harm their living conditions with regard to noise, disturbance and privacy effects. Those residents mainly live along the southern boundary of the appeal site. The Parish Council also raised concerns with the impact that building works and construction vehicles accessing the site could have on the living conditions of neighbouring residents.
23. As set out above, the appearance, landscaping, layout, and scale of the development are not specified for consideration. The potential layout of dwellings shown on the illustrative masterplan does not form part of the proposal. Increased pedestrian use of the existing footpath to the south of the appeal site would be likely. However, the level of that increase in use would not result in unacceptable harm to the privacy of any neighbouring residents, where members of the public are already free to use that footpath. The proposal would not therefore result in a harmful loss of privacy to any neighbouring residents.
24. The proposed vehicular access road would run between 23 Meadow Way and 1 Lamorna Gardens, along the side boundaries of their rear gardens. Beyond those properties, it would roughly follow a straight line parallel to the northern boundaries of rear gardens which serve 3 to 9 Lamorna Gardens, before turning north.
25. A Noise Impact Assessment⁶ (NIA) explains that a 3D noise model was used to calculate noise levels from anticipated development traffic at nearby residential properties, including those mentioned above. The NIA relies on predicted vehicle movements set out in the Transport Assessment⁷, which have been agreed as reasonable by the Highway Authority⁸.
26. The NIA demonstrates that likely noise emissions generated by development traffic would be within reasonable limits when experienced within nearby dwellings with open windows, and the rear gardens of 23 Meadow Way and 1 to 9 Lamorna Gardens. The Council does not dispute these findings, but it claims the change in noise levels would result in harm to the living conditions

⁶ By Cass Allen, ref: RP01-23298-R0, dated 15 May 2023

⁷ By Motion, Final Revision A, dated 23 November 2022

⁸ Consultation response from WSCC dated 22 December 2022

of occupiers of 23 Meadow Way and 1 Lamorna Gardens. No detailed analytical evidence is submitted to corroborate this view.

27. There will be changes to the levels of noise and disturbance experienced within the rear gardens and houses of the residential properties at 23 Meadow Way and 1 to 9 Lamorna Gardens. The evidence demonstrates that these changes would be noticeable, but not harmful to the living conditions of occupiers of those properties. The effect upon the living conditions of nearby residents, including those of 23 Meadow Way and 1 to 9 Lamorna Gardens, would not therefore be unacceptable.
28. I accept that construction works associated with the proposal, including construction vehicle movements, would be disruptive to local residents. However, such effects would be temporary and are associated with most development projects. There is an existing access to the appeal site from Hook Lane which is currently used by agricultural vehicles. Construction works and the access routes to be taken by vehicles associated with that process are capable of being controlled through conditions. For the same reasons set out above, I am unconvinced that access to the appeal site during construction works, either from the existing Hook Lane or proposed Meadow Way access points, would cause unacceptable harm to the living conditions of any nearby residents by way of noise or disturbance.
29. Policies QE SP1 and D DM1 of the ALP seek to avoid development which will have a significant negative impact upon residential amenity and cause unacceptable noise and disturbance, amongst other things. The proposal would not result in such harm and would accord with these policies with regard to its effect on the living conditions of nearby residents.

Other Matters

Biodiversity

30. The appeal site is approximately 11 kilometres from the Singleton and Cocking Tunnels Special Area of Conservation (SAC). It is within the 12 kilometre wider conservation area of the SAC, but outside its key conservation area. The SAC comprises disused railway tunnels which support large numbers of hibernating bats, including Barbastelle and Bechstein's bats, which are amongst the UK's rarest mammals. The SAC is designated and protected as a European Site and all species of bats are designated and protected as European Species by The Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations).
31. The conservation objectives of the SAC include maintaining functionally linked habitats, which comprise flightlines and foraging habitats outside of the SAC, ensuring that the integrity of the site is maintained and that the site contributes to achieving the favourable conservation status of its qualifying features.
32. The Council's Habitats Regulations Assessment⁹ found that the proposal would not be likely to have a significant effect on the integrity of the SAC at the screening stage. The Council's Ecological Consultant¹⁰ was satisfied that impacts upon the SAC and its qualifying features had been sufficiently assessed

⁹ The Council's Appendix 8

¹⁰ Place Services Ecology consultation response dated 12 July 2023

- by the Technical Note to Inform Habitat Regulations Assessment¹¹ (TN). I see no reason to disagree.
33. I note reference to bat sightings at the appeal site and within surrounding hedgerows. As set out above, the removal of sections of any hedgerow which appear to be shown on the Illustrative Masterplan do not form part of the proposal at this stage.
34. Bat surveys were undertaken at the site in 2022. These are described in the TN, which found that the site supports limited suitability for bat species and that hedgerows along the site boundaries offer the most interest, which may provide some habitat linkages for bats, who use linear features as flight lines for navigation. No Bechstein's bats were recorded at the site during those surveys, and that species typically forages close to its roosts, within woodland. Barbastelle bats have a further range, and 9 Barbastelle calls were recorded across 15 nights at the site. This led the TN to conclude that significant numbers of Barbastelle bats are not using the site. The TN found that with such low levels of use of the site by Barbastelle and Bechstein's bats, the SAC is not functionally linked to the site.
35. The development would avoid any potential significant adverse effects on the integrity of the SAC, when considered alone or in combination with other plans or projects. Therefore, it is not necessary for me to undertake any further consultation with Natural England on this matter or to undertake an Appropriate Assessment under the Habitats Regulations.
36. In addition to bats, I have considered other protected wildlife which may be affected. Based on everything I have read and heard, including the Ecological Impact Assessment¹² and Biodiversity Net Gain Assessment¹³, I am satisfied that any unacceptable harm to wildlife could be avoided through mitigation/compensation measures which could be secured by conditions. Furthermore, a 13% net gain in habitat units and a 21% net gain in hedgerow units could be achieved through enhancement measures.
37. Policy EH2 of the ANDP states that development immediately adjacent to Biodiversity Corridors, identified on specific maps, will only be supported where it can be clearly demonstrated that the development will not give rise to significant harm to the integrity or function of the Biodiversity Corridors. The policy refers to habitats within those corridors needing to be protected as they are important for feeding, roosting and movement of bats, amongst other things. It is unclear whether the proposal would be immediately adjacent to a corridor along part of Hook Lane. Even if it is, based on everything I have read and heard, I am satisfied that it would not give rise to any significant harm to the integrity or function of the Biodiversity Corridors. The proposal would accord with Policy EH2.

Highway Safety and Traffic Emissions

38. I am aware of significant development planned to the east of Westergate, which would include the eventual realignment of the A29 south of Barnham Road. The development would increase traffic on local roads, and I am aware that highway congestion can be experienced along the A29 by the level

¹¹ By The Ecology Partnership, Issue 3, dated 5 December 2022

¹² By The Ecology Partnership, Issue 3, dated 6 December 2022

¹³ By The Ecology Partnership, Issue 2, dated 5 December 2022

crossing. There will be an increase in traffic using the junction of Meadow Way and the A29, and significant numbers of pedestrians, including school children, regularly walk along these roads. Nevertheless, this junction has the appropriate visibility splays and there is a lack of detailed evidence to suggest the development would have a harmful effect on highway safety when considered alongside other proposed and permitted developments locally.

39. That reflects the comments of the Highway Authority and the findings of the Transport Assessment, which includes a Stage 1 Road Safety Audit. In addition to what was discussed at the Hearing, having experienced the roads surrounding the appeal site, I am unconvinced by claims that the proposal would be likely to result in unacceptable harm to highway safety, subject to conditions and the legal agreement.
40. The site has an existing access from Hook Lane which is used by agricultural vehicles and equipment. It may not be necessary for construction vehicles to access the appeal site from Hook Lane before the proposed access has been created from Meadow Way. In any case, the existing access from Hook Lane may be capable of providing an appropriate access point for vehicles during the construction process, before completion of the proposal and the implementation of the proposed cycle/pedestrian access.
41. The Highways Technical Note does not demonstrate that use of the existing access from Hook Lane, by construction vehicles, would have an unacceptable impact on highway safety. The scale of the proposal in relation to the size and position of the appeal site indicate that concerns relating to the effect of construction works on highway safety and living conditions of neighbouring residents could be addressed through a condition. This could secure the approval of a Construction and Environmental Management Plan in advance of the commencement of development. The existing and proposed accesses to the appeal site and wider road network are not restrained to such an extent that safe arrangements for access and egress of vehicles involved in the construction process could not be agreed with the Council at a later stage, avoiding unacceptable harm to the living conditions of neighbouring residents.
42. The likely increase in vehicles on local highways as a result of the proposal would be modest. The Air Quality Assessment¹⁴ sets out that each dwelling would have access to an electric vehicle charging point and concludes that emissions from road traffic associated with the proposal would have a negligible effect on air quality conditions along the local road network. The Air Quality Assessment shows the overall operational air quality effects would not be significant and there is no clear evidence to lead me to doubt this. Off-site highway improvements form part of the proposal, which would benefit local residents and improve the accessibility of local bus services to future occupants.

Flooding and Drainage

43. I have considered concerns that the appeal site is liable to flood and that drains have overflowed, which has included the release of foul sewage locally, during periods of heavy rain. I have also taken into account photographs showing waterlogged land at the appeal site.

¹⁴ By Air Quality Consultants Ltd, Report No. J10/12311A/10/1/F3, dated 20 January 2023

44. However, the Flood Risk Assessment and Drainage Strategy¹⁵ shows the appeal site is in Flood Zone 1, which has a low probability of flooding from rivers, and that it is at very low risk of surface water flooding. The Council's Drainage Engineer and Southern Water raised no objections, subject to conditions being imposed on any planning permission granted. Although I have been provided with evidence of localised flooding concerns¹⁶, I am unconvinced that any drainage, flooding or foul sewage issues associated with the proposal could not be appropriately addressed by conditions.

Dark Skies

45. The South Downs National Park Authority raised no objection to the proposal with regard to its impact on the setting of the National Park, subject to a condition relating to external lighting. I am satisfied that this could address light pollution and dark skies concerns relating to Policy EH10 and the second criterion of Policy EH1 of the ANDP.

Local Infrastructure

46. I heard concerns about local services, including doctors' and dentists' surgeries, being at capacity and unable to accommodate further residents. The appellant suggested these were not uncommon issues across the country and pointed out that no objections had been made to the proposal in this regard by any clinical commissioning group or the Council. The information provided in relation to local infrastructure capacity is anecdotal, but I do not doubt that it is difficult to secure doctor or dentist appointments across a wide area.
47. No obligations have been sought from the Council as part of the legal agreement to address any deficiencies which may exist in local infrastructure, other than those discussed below. The Council's officer report explains that Community Infrastructure Levy receipts from the development would contribute towards local projects, schools, libraries, sports facilities, allotments and the local health service. There is no clear and reliable evidence that future residents would not be able to access appropriate healthcare or that the proposal would have any notable detrimental effect on local infrastructure, including healthcare provision.

Planning Obligations

48. A completed legal agreement has been entered into between the relevant parties to secure 30% of the proposed dwellings as affordable housing units and a managed publicly accessible area of open space. The legal agreement also secures the submission of a travel plan and the payment of financial contributions towards travel plan monitoring, the provision of transport for children to and from school, and a planning obligation monitoring fee.
49. Policy AH SP2 of the ALP requires a minimum 30% of all developments of 11 residential units to comprise affordable housing. This should be provided within the same site. The legal agreement requires the provision of the appropriate amount of affordable housing and stipulates that no development shall commence until an affordable housing scheme has been approved by the Council. This would ensure compliance with Policy AH SP2.

¹⁵ By Motion, Issue: Final D, dated 23 November 2022

¹⁶ Including those set out in the report by Richard Allitt Associates Ltd, dated February 2023

50. A Framework Travel Plan¹⁷ has been agreed as acceptable by the Highway Authority, subject to appropriate monitoring. The only means to secure such monitoring would be through the agreement of further details and the payment of a travel plan monitoring fee. The legal agreement requires a travel plan to be approved by West Sussex County Council (the County Council) prior to the commencement of development, and the payment of £3,500.00. That payment shall be index linked and paid within 10 working days of the commencement of development, which the County Council shall use for travel plan monitoring purposes. That would appear to be appropriate, considering the scale and location of the development proposed. This would seek to encourage future residents to consider and make use of transport options other than private motor vehicles for local journeys, in accordance with Policy T SP1 of the ALP.
51. Local residents and the Ward Councillor explained that local primary and secondary schools had little or no places for new students, and that there was a severe lack of secondary school places across the district. I have been advised that proposed development to the east of Westergate includes provision of a new secondary school, but that development is yet to receive planning permission and there are no known likely timescales for the delivery of a new secondary school within the district.
52. The Lead Education Authority objected to the proposal, but it suggested an interim solution. The interim solution would secure the costs associated with transporting secondary school pupils unsuccessful in obtaining a place at their preferred or catchment school, to fund their transport to alternative secondary schools in the county. It was claimed at the Hearing that such an arrangement would see secondary school pupils being transported 28 miles to the nearest secondary schools with capacity for additional pupils.
53. I also heard that there were complex arrangements in place for assigning secondary school places, administered by education experts. In the absence of further expert evidence on the matter, I find it very unlikely that pupils, including those already living in Westergate, would be forced to travel 28 miles for secondary school education as a result of the proposal. It is possible that the ability of local schools to take on additional pupils may improve or worsen before the proposal could be occupied. In either case, it appears that some secondary school pupils across the district may need to travel longer distances from their homes to reach schools until a new secondary school is delivered within the district, even in the absence of the proposed development.
54. The legal agreement secures the payment of an education transport contribution within 10 days of the commencement of development. This would amount to the cost of £1,434.00 per pupil per year (to be reviewed annually), multiplied by the estimated number of secondary school pupils likely to be generated by the proposal, over a period of 5 years. This figure is based on the cost of a bus/coach with a pupil capacity of 53 costing £400.00 per day at current rates. As a temporary arrangement, this would be a reasonable solution to ensure future occupiers of the development would have access to education facilities, without having an unacceptable effect on access to education facilities across the district.
55. A monitoring fee of £1,200.00 is secured, to cover the Council's costs incurred in monitoring the delivery of the planning obligations. Considering the extent of

¹⁷ By Motion, Final Revision A, dated 23 November 2022

obligations set out in the legal agreement, notwithstanding a separate travel plan monitoring fee also being secured, this would appear to be reasonable and proportionate to the development.

56. The legal agreement would ensure the development accords with Policies AH SP2, T SP1, and INF SP1 of the ALP. These require, amongst other things, development to promote sustainable transport options, to provide appropriate levels of affordable housing, and to contribute toward services. The legal agreement is therefore necessary to make the development acceptable in planning terms, directly relevant to the development, and fairly and reasonably related in scale and kind to the development.

Housing Land Supply and Planning Balance

57. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, it is necessary for me to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration, but the development plan is the starting point for decision-making.
58. The Council cannot demonstrate a 5-year supply of deliverable housing sites. Where this is the case, paragraph 11 of the Framework explains that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
59. The Council's latest Annual Monitoring Report (January 2023) states there is a housing land supply of 2.36 years. The latest Housing Delivery Test results (2021) show the Council delivered only 65% of its housing requirement in the previous 3 years. Evidently, there are severe and chronic shortages of housing land supply and housing delivery within the district. Recent planning applications and permissions for other housing developments suggest there may be some improvement in these regards in future years. On the evidence presented, I am unconvinced that there has been a significant improvement in housing land supply or housing delivery within the district since the last Annual Monitoring Report and Housing Delivery Test results, or that there will likely be significant improvements in the near-future.
60. It was agreed between the main parties that the most important development plan policies for determining this appeal are policies C SP1, SO DM1, D DM1, and QE SP1 of the ALP and Policies EH1 and EH3 of the ANDP. Policy EH2 of the ANDP was also put forward as one of the most important development plan policies for determining the appeal. I have found that the proposal would accord with Policies D DM1, QE SP1, EH2 and EH3 for the reasons given above.
61. I have found that the proposal would be contrary to Policies C SP1 and SO DM1 of the ALP and Policy EH1 of the ANDP. The Council accepts, on account of its housing land supply position, that it will grant planning permission for housing in the countryside adjacent to the Built-Up Area Boundaries contrary to Policy C SP1. It has also accepted that although it would seek to focus new housing development on lower grade agricultural land, it may well be necessary for BMVAL to be used to provide housing. Much of the district comprises BMVAL,

- especially that surrounding existing development where infrastructure and services are located, outside of the South Downs National Park¹⁸.
62. The Agricultural Land Classification and Soil Resources Report¹⁹ explains that the proposal would result in the economic loss of £3,000.00 per annum, which would not represent a significant development of agricultural land, and that there are limited opportunities to direct development to areas of poorer agricultural quality within the district. I accept that the cumulative loss of BMVAL may have a notable negative effect on agricultural and horticultural production. However, it is clear that the Council is prepared to grant planning permission for housing on some BMVAL and there is little evidence to explain why the BMVAL in this particular case would not be suitable for development.
63. I have considered an appeal decision²⁰ where the loss of BMVAL, which had not been in agricultural use for more than 40 years, was found to result in a reduced level of environmental and economic harm, compared to such land in active use. However, I do not agree that this means increased weight should be assigned to the harm which would be caused by the loss of BMVAL in active use in this case, although I note the economic loss referred to above. This is because the starting point for Policy SO DM1 of the ALP is to protect the active use of BMVAL for agricultural, horticultural or forestry purposes.
64. The proposal only fails to accord with Policy EH1 of the ANDP on account of the appeal site being within 50 metres of a biodiversity corridor. Detailed evidence has been provided which convinces me that there would not be significant harm to Barbastelle or Bechstein's bats, and that any harm which may be caused to wildlife could be adequately mitigated through the use of conditions. For these reasons, together with the potential biodiversity enhancements, I assign only modest weight to the conflict between the proposed development and Policy EH1.
65. I accept that it is possible that a slow delivery of strategic housing sites within the district may be one of the main issues behind the shortfall in housing supply. It is also possible that the housing shortfall will be temporary. However, it is clear that the Council's strategic approach to managing the location of housing on land within the Built-Up Area Boundaries and not on BMVAL is resulting in a severe and prolonged under-delivery of housing within the district. I therefore assign only moderate weight individually to the conflict with Policies C SP1 and SO DM1 of the ALP in this particular case.
66. There would be a contribution of up to 89 dwellings towards what is a severe and chronic under-delivery of housing land supply within the district. At least 30% of those dwellings would be affordable, against a backdrop of 900 applicant households on the Housing Register in 2018. There is little information to suggest that position has improved greatly in recent years. There would be modest temporary economic benefits throughout the construction phase of the development and long-term small-scale economic benefits to local businesses resulting from up to 89 new households living at the appeal site. There would also be a biodiversity net gain of at least 10%, which is not currently required by local or national policies, but it will be in the near future.

¹⁸ The appellant's Appendix 10

¹⁹ By Reading Agricultural Consultants, dated November 2022

²⁰ APP/C3810/W/19/3234972

67. The Parish Council has advised that other housing development granted elsewhere in the district reduces the weight which I should assign to the benefits of the proposal. It is claimed that the provision of up to 89 houses, including affordable housing, should not be assigned significant weight because the proposal would not make a difference to future planning decisions relating to other housing development under similar circumstances. I disagree, taking into account the specific issues relating to the proposal and the appeal site, but particularly their size and location, which mean that the proposal could be built out relatively quickly in comparison to larger schemes I have been referred to.
68. The provision of up to 89 dwellings in what the Council has referred to as a sustainable location would have a moderate impact on the Council's 5-year housing land supply position. The Council has suggested it would be appropriate in this case to allocate 'substantial/significant weight to the contribution to the housing shortfall'. In my view, the supply of market and affordable housing within the district is such that I assign substantial weight to the benefits associated with the provision of up to 89 dwellings, 30% of which would be affordable, in this particular location. I assign modest cumulative weight to the economic and biodiversity benefits associated with the proposal. Taken together, these benefits amount to substantial weight in favour of granting planning permission.
69. Paragraph 15 of the Framework states that the planning system should be genuinely plan-led, but I have found that the Council's plan-led approach for the strategic distribution of housing is failing. I have not been provided with convincing evidence that housing land supply or housing delivery will greatly improve in the district in the short or medium terms.
70. The Government's objective is to significantly boost the supply of housing. The Framework refers to the important contribution small sites can make to meeting the housing requirement of an area and explains that planning decisions should promote an effective use of land in meeting the need for homes while safeguarding the environment and ensuring healthy living conditions. Elsewhere, the Framework advises that planning decisions should ensure that developments will function well and optimise the potential of sites to accommodate an appropriate amount of development, amongst other things.
71. Overall, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal resulting from its conflict with the most important development plan policies amount to significant, but not substantial, weight against planning permission being granted. On the other side, the benefits attract substantial weight in favour of planning permission being granted.
72. I have read the appeal decisions²¹ referred to, and I note the various detailed comments made by the Parish Council throughout the application and appeal processes, including those which refer to public confidence in the planning system and proposed changes which may be made to the Framework. I have taken all points made into account as part of my deliberations and they do not lead me to any different conclusions on the matters relevant to this appeal.
73. In conclusion, I find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed

²¹ Appeal refs: APP/R3650/W/22/3310793, APP/Q3115/W/22/3309622

against the policies in the Framework taken as a whole. Therefore, although I have found that the proposal would conflict with the development plan, the Framework is a material consideration that indicates a decision other than in accordance with the development plan, which leads me to conclude that planning permission should be granted.

Conditions

74. A list of agreed suggested conditions has been provided and was discussed at the Hearing. Where necessary, I have amended those conditions to ensure they meet the tests at paragraph 56 of the Framework.
75. The application is made in outline in respect of access only, and it is necessary to attach standard conditions identifying the approved plans and requiring an application for the approval of the appearance, landscaping, layout, and scale of the development and the commencement of development within the relevant timeframes.
76. The approved plans provide details of the proposed accesses, which would need to be completed to the specification provided in the interests of highway safety. It would also be necessary for a condition to require details of all roads, footways and parking areas to be approved as part of the reserved matters application and for those parts of the development to be completed prior to the first occupation of any dwelling to ensure safe access for future occupants. For the same reason, it is necessary to attach a condition requiring the approval of a timetable for the construction of the accesses.
77. A condition requiring the approval of a construction and environmental management plan before the commencement of development is necessary. This is to allow the Council to control various aspects of the construction process in the interests of highway safety and to protect the living conditions of neighbouring residents with particular regard to noise and disturbance. It would also be reasonable to control the hours between which construction activities can take place to protect the living conditions of neighbouring residents, restricting them to 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays.
78. Trees are located around the edges of the appeal site and it would be reasonable and necessary to require further details of the effect of the landscaping and layout of the development on those features as part of the reserved matters application to protect the character and appearance of the area. The reserved matters application will also need to include details of boundary treatments, external lighting, public open space, play areas, wall and roof finishes, and temporary sales areas to ensure appearances and landscaping are appropriate for their location.
79. Conditions are necessary to ensure the development is designed to be accessible with regard to Parts M4(2) and M4(3) of the Building Regulations, and to ensure that various transport options are available to future occupants. This would allow the dwellings to be occupied by a wide range of people and to allow bicycle storage and electric vehicle charging points to be designed into the development, in line with the mitigation measures set out in the Air Quality Assessment.

80. Conditions requiring compliance with the submitted Ecological Impact Assessment and further details in respect of biodiversity gain and protected species would be needed to avoid any unacceptable harm to wildlife and to ensure appropriate biodiversity enhancements are carried out. The external lighting details would also need to demonstrate there would be no unacceptable harmful effect on bats.
81. Details of foul and surface water drainage systems would need to be approved before the commencement of development to allow those systems to be incorporated into the development. Those systems would need to be retained and maintained in accordance with those details, with a completion report to be submitted to the Council prior to the first occupation of any dwelling to ensure the surface water drainage system is in effect and that enforcement action could be considered if it is not. With regard to flood zones surrounding the appeal site, it would be reasonable and necessary to prevent discharges from the development into watercourses and any alterations to watercourses, unless otherwise approved by the Council.
82. A condition requiring off-site highway improvements would be reasonable and necessary to ensure future occupants of the development would have good access to nearby bus stops, to encourage bus use as a more sustainable mode of transport in comparison to private motor vehicles. Those works would require an agreement to be entered into with the Highway Authority under section 278 of the Highways Act 1980 (as amended).
83. An employment and skills plan would be necessary to comply with Policy SKILLS SP1 of the ALP, considering the size of the development. This would ensure local craftspeople and apprentices are considered for employment at the site. This would need to be approved before the commencement of development to take full account of the employment opportunities created.
84. As an arable field which has historically been in agricultural use, it would be necessary for a condition to require the completion of a contamination risk assessment prior to the commencement of development to protect the living conditions of future occupants and neighbouring residents. If that risk assessment identifies any contamination, a remediation scheme would need to be approved, also before the commencement of development. It would also be reasonable to attach a condition requiring development to cease and a further risk assessment to be carried out and approved in the event that any unexpected contamination is found during construction works.
85. A condition requiring the approval of a written scheme of investigation and the carrying out of any necessary archaeological work would be necessary to examine any archaeological potential at the appeal site, in accordance with the recommendations of the appellant's Archaeological desk-based assessment²².
86. It would be reasonable and necessary to attach a condition controlling the design of the dwellings to ensure appropriate noise levels would be experienced by future occupants, and a condition requiring the provision of appropriate broadband infrastructure. This would protect the amenities of future occupants and support opportunities for home working.

²² Report 21/133, dated June 2022 by TVAS South

87. A condition requiring at least 10% of energy supply to be provided from decentralised and renewable or low carbon sources is necessary for the development to accord with Policy ECC SP2 of the ALP in relation to efficient energy consumption. For this to be enforceable, the condition would need to require the approval of details of how that would be achieved, and the implementation of those details. It is also necessary to attach a condition requiring approval and implementation of fire hydrant details. These details would need to be approved before any development above damp proof course level to allow them to be integrated within the development.
88. A Soil Resource Plan has already been submitted, which sets out a suitable strategy and procedures for stripping, storing and reinstating soils throughout the construction process. It is necessary to require that Soil Resource Plan to be adhered to in the interests of the finished appearance of the development with regard to the establishment of landscaping details, and to avoid the need to import soil into the site.

Conclusion

89. For the reasons outlined above, the appeal should be allowed.

L Douglas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Adam Ross	Planning Consultant
Phil Bell	Highways Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Simon Davies	Principal Planning Officer
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INTERESTED PARTIES:

Sue Wallsgrove	Ward Councillor
Steve Tilbury	Planning Consultant, on behalf of Aldingbourne Parish Council
Margaret Rhodes	Local resident
Mike Turner	Local resident
Joy Rutter	Local resident
Mark Kennard	Local resident
Susan Deadman	Local resident
Lucy French	Local resident
Alan Johnson	Local resident
Brian Fitzgerald	Local resident
Mark Gregory	Local resident

DOCUMENTS PROVIDED AT THE HEARING

- Policy AH SP2 of the Arun Local Plan 2011-2013 (2018)
- The appellant's costs application

DOCUMENTS PROVIDED AFTER THE HEARING

- Observations on Planning Application for development by Richard Allitt Associates Ltd, dated February 2023, commissioned by Aldingbourne Parish Council
- Legal agreement dated 26 October 2023

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 takes place and the development shall be carried out as approved.
- 2) The application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) The development including the access hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 1318.01; Parameter plan 13.18.03; Proposed Site Access drawing 1809023-04 Revision C; Improvements to Pedestrian Route and Bus Stops at Westergate Street drawing 1809023-06 Revision B; and Hook Lane Pedestrian / Cycle Access Arrangement drawing 1809023-07 Revision A.
- 4) The landscaping and layout details to be submitted pursuant to condition 1 shall include the following:
 - (i) Details of all existing trees and hedgerows on the land indicating which are to be retained and which are to be removed. These required details are to include a 'Tree Survey Schedule', a 'Root Protection Area Schedule', a 'Tree Constraints Plan', and in the event that a root protection area of any tree which is proposed for retention overlaps the development, then an 'Arboricultural Method Statement' and a 'Tree Protection Plan'. Development shall be carried out in accordance with the approved details. No hedge or tree shall be felled, uprooted, or otherwise removed before, during or after the construction period except where removal is indicated on a plan approved by the local planning authority.
 - (ii) Landscaping details including the use of native trees and compensatory planting on the basis of at least 2 trees/hedge units for every 1 lost.
 - (iii) Details of the position, design, materials, height, and type of all boundary treatments to be provided. The boundary treatments shall be provided to each dwelling before the dwelling is first occupied or in accordance with an approved phasing plan. Gaps shall be included at the bottom of the fences to allow movement of small mammals across the site.
 - (iv) Details of all external lighting (including type of light appliance, the height and position of fitting, predicted illumination levels and light spillage). The details shall seek to conform with the recommendations of the Institution of Lighting Professionals "Guidance Notes for the Reduction of Obtrusive Light" (GN01:2011). In addition, they must: (a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and (b) show how and where external lighting will

be installed (through provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the approved details and maintained thereafter in accordance with the details. No other external lighting shall be installed.

(v) Details of public open space and play areas. The public open space and play areas shall thereafter be completed in accordance with the approved details prior to the first occupation of the 45th dwelling, and they shall be maintained and retained thereafter.

(vi) A Biodiversity Gain Plan to ensure that there is a minimum 10% net gain in biodiversity within a 30-year period as a result of the development. The net biodiversity impact of the development shall be measured in accordance with the Secretary of State's biodiversity metric as applied in the area in which the site is situated at the relevant time. The content of the Biodiversity Gain Plan shall include the following: (a) Proposals for the on-site biodiversity net gain; and (b) A management and monitoring plan for onsite biodiversity net gain including 30-year objectives, management responsibilities, maintenance schedules and a methodology to ensure the submission of monitoring reports in years 2,5,10,15,20,25 and 30 from commencement of development, demonstrating how the Biodiversity Gain Plan is progressing towards achieving its objectives, evidence of arrangements and any rectifying measures needed. The development shall be carried out in accordance with the approved Biodiversity Gain Plan.

(vii) A Reptile Mitigation Strategy which shall include the following:

(a) Purpose and conservation objectives for the development hereby permitted;

(b) Review of site potential and constraints;

(c) Detailed designs and/or working methods to achieve stated objectives;

(d) Extent and area of proposed works on appropriate scale plans;

(e) Type and source of materials to be used where appropriate;

(f) Timetable for implementation demonstrating that the Reptile Mitigation Strategy is aligned with any phasing of development;

(g) Details of persons responsible for carrying out the Reptile Mitigation Strategy;

(h) Details of initial aftercare and long-term maintenance of any Receptor areas.

(i) Details for any monitoring and remedial measures; and

(j) Details for disposal of any wastes arising from the Reptile Mitigation Strategy.

The Reptile Mitigation Strategy shall be carried out in accordance with the approved details and all features shall be retained as approved thereafter.

(viii) A Biodiversity Enhancement Strategy for protected and Priority species prepared by a suitably qualified ecologist. The content of the Biodiversity Enhancement Strategy shall include:

(a) Purpose and conservation objectives for the proposed enhancement measures;

(b) detailed designs or product descriptions to achieve stated objectives;

- (c) locations, orientations, and heights of proposed enhancement measures by appropriate plans;
- (d) details of persons responsible for implementing the enhancement measures; and
- (e) details of initial aftercare and long-term maintenance.

The Biodiversity Enhancement Strategy shall be carried out in accordance with the approved details and all features shall be retained as approved thereafter.

- 5) The layout, scale, and appearance details to be submitted pursuant to condition 1 shall include the following details:
 - (i) A scheme for the provision of facilities to enable the charging of electric vehicles in accordance with the Arun Parking Standards Supplementary Planning Document to serve the approved dwellings;
 - (ii) A detailed level survey of the site including existing and resulting ground levels and the slab levels of the development hereby permitted;
 - (iii) a minimum of 5% of all parking to be provided as suitable for disabled persons. This must include a percentage of the proposed visitor parking spaces;
 - (iv) Cycle storage facilities including elevations; and
 - (v) A colour schedule of the materials and finishes to be used for the external walls and roofs of the development hereby approved.
- 6) The layout, scale and appearance details referred to in Condition 1 shall include details of any temporary sales areas that may be required during the construction and marketing of the development. Such details shall include any temporary buildings or temporary changes to buildings and any temporary change to the development layout. The approved details shall be for a temporary period only ending on or before the date that the last dwelling on the site has been sold. The buildings or area shall be returned to their approved appearance within 3 months of the date of the last building sold.
- 7) The reserved matters application pursuant to condition 1 shall include details of how the development will provide accommodation to meet the Building Regulations Standards M4(2) and M4(3) in accordance with Policy H2 of the Aldingbourne Neighbourhood Development Plan 2019-2031 (2021) and Arun District Council's guidance note entitled "Accommodation for Older People and People with Disabilities Guidance", for approval by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) The reserved matters application pursuant to condition 1 shall include details of all roads, footways and parking areas which would serve the development for approval by the local planning authority. No dwelling hereby permitted shall be first occupied until all roads, footways and parking areas have been completed in accordance with the approved details.
- 9) No development shall take place until a Construction and Environmental Management Plan, accompanying Site Setup Plan, and details of any temporary site accesses have been submitted to and approved in writing by the local planning authority. Thereafter the approved details shall be carried out and adhered to throughout the construction period. The Construction

and Environmental Management Plan must include details of the following information for approval:

- (a) the phased programme of construction works;
- (b) the maximum numbers and frequencies of vehicles entering and exiting the site and the timing windows of those vehicles entering and exiting the site on different days of the week, and the details of the types of those vehicles;
- (c) the preferred road routeing for all construction traffic associated with the development;
- (d) provision of wheel washing facilities (details of their operation & location) and any other works required to mitigate the impact of construction upon the public highway (including the provision of any necessary temporary Traffic Regulation Orders);
- (f) street sweeping arrangements, where necessary;
- (g) a means of suppressing dust and dirt during the construction;
- (h) a scheme for recycling/disposing of waste during construction;
- (i) all proposed external lighting to be used during construction (including location, height, type and direction of light sources and intensity of illumination);
- (j) areas for the loading, unloading, parking, and turning of vehicles associated with the construction of the development;
- (k) areas to be used for the storage of plant and materials;
- (l) the temporary site enclosure to be used throughout the course of construction;
- (m) contact details for the site contractor, site manager and CDM co-ordinator (including out-of-hours contact details);
- (n) the arrangements for public engagement/consultation both prior to and continued liaison during the construction works;
- (o) any temporary traffic management that may be required to facilitate the development including chapter 8 traffic signage; and
- (p) measures to minimise the noise and vibration generated by the construction process to include hours of work, proposed methods of piling for foundations, the careful selection of plant and machinery, and the use of noise mitigation barriers if necessary.

- 10) No development shall commence until details of a proposed foul drainage system have been submitted to and approved in writing by the local planning authority (including details of its siting, design, and subsequent management / maintenance) and no dwelling shall be first occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 11) No development shall commence, other than works of site survey and investigation, until details of a proposed surface water drainage scheme, including details of its maintenance and management set out in a site-specific maintenance manual, have been submitted to and approved in writing by the local planning authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Design considerations must take full account of the 'Supplementary Requirements for Surface Water Drainage Proposals' produced by Arun District Council and are an overriding factor in terms of requirements. Winter groundwater

monitoring to establish highest annual ground water levels and winter percolation testing to BRE 365, or similar approved standard, will be required to support the design of any infiltration drainage. The site-specific maintenance manual shall include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. No dwelling shall be first occupied until the approved surface water drainage scheme has been completed in accordance with the agreed details. The approved surface water drainage scheme shall thereafter be retained and maintained in accordance with the approved site-specific maintenance manual.

- 12) No dwelling hereby permitted shall be first occupied until as-built drawings of the implemented surface water drainage scheme and a completion report (prepared by an independent engineer confirming that the implemented surface water drainage scheme is fit for purpose) have been submitted to and approved by the local planning authority.
- 13) No development shall commence until an Employment and Skills Plan has been submitted to and approved by the local planning authority. The approved Employment and Skills Plan shall be carried out and adhered to throughout the construction of the development hereby approved.
- 14) No development shall commence until the implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation to be submitted to and approved by the local planning authority.
- 15) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - (a) a survey of the extent, scale and nature of contamination;
 - (b) the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - (c) adjoining land;
 - (d) ground waters and surface waters; and
 - (e) ecological systems.
- 16) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall

be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is first occupied.

- 17) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 18) No development shall commence until an agreement pursuant to section 278 of the Highways Act 1980 (as amended) has been entered into with the local highway authority to enable the following off-site highway works to be carried out (as shown in the approved plan titled 'Improvements to Pedestrian Route and Bus Stops at Westergate Street drawing 1809023-06 Revision B'):
 - (a) the upgrading of the surface, cutting back of vegetation, and the upgrading/provision of any lighting of the Public Right of Way between Meadow Way and Westergate Street.
 - (b) improvements to the two bus stops on Westergate Street located immediately to the south of Elmcroft Place including shelters and real time public information displays.
 - (c) the existing traffic island located to the north of the Elmcroft Place junction with Westergate Street to be upgraded to a pedestrian crossing point refuge island with the carriageway width on both sides; and
 - (d) the re-alignment of kerbs and crossing points to be provided over the junction of Elmcroft Place with Westergate Street.The locations of all of these off-site highway works are identified on the approved plan referred to above. The off-site highway works shall be completed prior to the first occupation of any dwelling hereby permitted.
- 19) No development above the damp-proof course level of any dwelling shall take place until a scheme to demonstrate the following has been submitted to and approved in writing by the local planning authority:
 - (a) internal noise levels within the residential units will conform to the 'Indoor ambient noise levels for dwellings' guideline values specified within Table 4 under section 7.7.2 of BS 8233:2014; and
 - (b) external noise levels within the curtilage of the residential units will conform to the 'Design criteria for external noise' upper guideline value of 55 dB LAeq, T as specified within section 7.7.3.2 of BS 8233:2014.The scheme shall be compiled by a qualified acoustician on sound insulation and noise reduction for buildings and gardens. The scheme shall take into account the correct number of air changes required for noise affected rooms. The approved scheme shall be carried out and completed prior to the first occupation of any dwelling hereby permitted.

- 20) No development above the damp-proof course level of any dwelling shall take place until details of fire hydrants to serve the site have been submitted to and approved in writing by the local planning authority. Those details shall include how the fire hydrants will be connected to an appropriate water supply in terms of pressure and volume for the purposes of firefighting. The fire hydrants shall be installed and connected to the specified water supply in accordance with the approved details prior to the first occupation of any dwelling. The fire hydrants shall thereafter be retained and maintained by the water undertaker at the expense of the Fire and Rescue Service if adopted as part of the public mains supply (Fire Services Act 2004) or by the owner/occupier if the installation is retained as a private network.
- 21) No development above the damp-proof course level of any dwelling shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and thereafter retained in operation.
- 22) No construction activities shall take place other than between the hours 0800 to 1800 on Mondays to Fridays and 0800 to 1300 on Saturdays. No construction work shall take place on Sundays or Bank/Public Holidays.
- 23) No dwelling hereby permitted shall be first occupied until a timetable covering the construction of the vehicular and non-vehicular accesses serving the development has been submitted to and approved in writing by the local planning authority. The accesses shall thereafter be constructed in accordance with the approved timetable and details shown on the approved plans referred to by Condition 3.
- 24) No dwelling hereby permitted shall be first occupied until infrastructure is implemented to allow for the provision of the highest available headline speed of broadband provision to future occupants of all dwellings from a site-wide network provided as part of the initial highway works and in the construction of frontage thresholds to buildings that abut the highway.
- 25) The development hereby permitted shall be carried out in accordance with the mitigation measures set out in the Air Quality Assessment, Report No. J10/12311A/10/1/F3, dated 20 January 2023, by Air Quality Consultants Ltd.
- 26) The development hereby permitted shall be carried out in accordance with the mitigation and enhancement measures set out in the Ecological Impact Assessment, Issue 3, dated 6 December 2022, by The Ecology Partnership Ltd. An appropriately competent person, such as an ecological clerk of works, must be appointed to provide on-site ecological expertise and to oversee the carrying out of the mitigation and enhancement measures set out in the Ecological Impact Assessment.
- 27) The development hereby permitted shall be carried out in accordance with the Soil Resource Plan set out in the Agricultural Land Classification and Soil Resources Report dated November 2022 by Reading Agricultural Consultants.

- 28) No discharge shall flow from the development hereby permitted into any watercourses, and no culverting, diversion, infilling or obstruction of any watercourses shall take place on the site, unless otherwise approved by the local planning authority.

Richborough



Costs Decision

Hearing held on 17 October 2023

Site visit made on 17 October 2023

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Costs application in relation to Appeal Ref: APP/C3810/W/23/3323858

Land to the rear of Meadow Way, Westergate

Grid Ref Easting: 493620, Grid Ref Northing: 104816

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gleeson Land for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for proposed development described in the application form as: Outline planning application with all matters reserved, other than principal means of access and demolition of 24 Meadow Way, for the construction of up to 89 residential dwellings, with access taken from Meadow Way, together with the provision of open space, landscaping and associated infrastructure.
-

Decision

1. A partial award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant submitted their costs application against the Council orally at the Hearing and provided a written copy at the same time. After a brief adjournment, the Council provided an oral response to the application and the applicant made final comments on that response at the Hearing. The application is for a full award of costs, on substantive grounds.

The Applicant's Claims

4. The applicant refers to the Council's handling of the planning application, which was submitted on 8 December 2022. On 21 February 2023, the Council's Planning Officer advised the applicant that it was expected that the planning application would be put to the Council's Planning Committee in April 2023 with a recommendation for approval. The Council's Planning Officer emailed the applicant on 17 March 2023 to advise that having considered the application in depth, the application would not be put to the Planning Committee, and instead it would be recommended for refusal on account of noise and disturbance which would be caused to neighbouring residents, and insufficient information relating to bats. This email explained that the Council had no objection to the proposal in principle. The applicant pointed out that noise and disturbance had

not been raised as a concern in pre-application planning advice provided by the Council.

5. The planning application was refused for 5 reasons. The applicant claims the first reason for refusal (RfR 1), relating to the living conditions of neighbouring residents, was vague and not supported by objective technical evidence, in the absence of an objection from the Council's environmental health team.
6. It is claimed the second reason for refusal (RfR 2), relating to the absence of a bat survey concerning 24 Meadow Way, should have been avoided by the Council waiting for the applicant's scheduled bat survey to be completed at the earliest possible point in the year.
7. It is claimed that the third reason for refusal (RfR 3), relating to the loss of Grade 2 agricultural land, should not have been relied upon considering the need for housing in the district and the findings in a previous appeal decision.
8. It is claimed the fourth and fifth reasons for refusal (RfR 4 and 5), relating to the absence of a legal agreement to address affordable housing and education transport contribution matters were unnecessary, as the relevant legal agreement was always going to be forthcoming.

The Council's Response

9. The Council explained that RfR 1 refers to the change in living conditions which would be experienced by neighbouring residents, with particular regard to noise and disturbance, and that those changes would not be shown in a noise report. As such, it is claimed the Noise Impact Assessment (NIA), which was submitted as part of the applicant's Hearing Statement, would not be helpful to its environmental health team.
10. With regard to RfR 2, the Council claims the relevant bat survey should have formed part of the application and could not have been required by condition. The Council was not under an obligation to substantially delay its decision on the application. It is claimed that waiting for the relevant survey to be submitted would have required further time for the Council to consider the report, consult relevant parties, and write the officer report, all of which would have delayed the determination of the application by at least 4 additional weeks beyond its target determination date.
11. The Council has explained that the proposal would be contrary to Policy SO DM1 of the Arun Local Plan 2011-2031 (2018) (ALP) and it considered the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, with regard to paragraph 11 of the National Planning Policy Framework (the Framework). This, it is claimed, justified RfR 3. A legal agreement had not been completed by the time of the Hearing, and in its absence the Council reiterated its reasoning behind RfR 4 and 5.

RfR 1

12. The proposal would bring about a significant change to activity around properties on Meadow Way and Lamorna Gardens, amongst others. There is a great deal of interest from local residents in the proposal, and many of them objected on noise and disturbance grounds.

13. Although the Council's environmental health team did not object to the proposal, it was not unreasonable for the Council to conclude that the proposed vehicular access would result in significant noise and disturbance and a level of activity beyond that which would reasonably be expected in the rear gardens of 23 Meadow Way and 1 Lamorna Gardens. Read alongside the Council's officer report, RfR 1 was not vague to the extent that the applicant was able to understand the Council's concerns.
14. The Council should not have been prevented from reaching this conclusion, even if informal pre-application advice had not raised any noise or disturbance concerns with the proposal. The quality and value of the pre-application advice would be a concern, but that would not have constituted unreasonable behaviour leading to unnecessary or wasted expense in the appeal process.
15. The NIA was submitted as part of the appellant's Hearing Statement and comprises an objective assessment of the potential effect of the proposal on the living conditions of neighbouring residents with regard to noise and disturbance. The Council did not dispute the findings of the NIA; however, it maintained that the changes to noise and disturbance which would be experienced in the rear gardens of 23 Meadow Way and 1 Lamorna Gardens would be significant and beyond what residents of those properties would reasonably expect. This view was not supported by detailed evidence at the Hearing.
16. Having confirmed that it did not dispute the findings of the NIA, it was unreasonable for the Council to pursue RfR 1 at the Hearing without detailed evidence to justify its position. This resulted in the applicant incurring unnecessary expense in the appeal process when preparing for the Hearing after the submission of the Hearing Statement in respect of RfR 1, and the short period of time spent during the Hearing discussing RfR 1.

RfR 2

17. The planning application was accompanied by various documents relating to ecological matters, including the effect of the proposal on bats. The Ecological Impact Assessment explains: 'A Preliminary Ecological Appraisal (PEA) of the arable field was initially undertaken in 2021, with an update PEA in November 2022 to include the proposed access area located within the current residential property at 24 Meadow Way. Protected species survey work for bats, dormice, reptiles and great crested newts were undertaken on site throughout the course of 2022'.
18. It is not clear why a bat survey was not undertaken at 24 Meadow Way at an appropriate time of the year, following the PEA but before the submission of the planning application. It would have been helpful had the Council agreed an extended period of time with the applicant for the planning application to be determined following the submission of the absent bat survey, but I note the further delays this would have caused to the Council's decision making process. It was not unreasonable for the Council to proceed to issue a decision when it did on the information submitted as part of the application, as submission of the bat survey for 24 Meadow Way would not have altered the Council's other grounds for refusal.

19. The Council conceded RfR 2 once it had received and considered the bat survey for 24 Meadow Way, some time prior to the Hearing. This avoided the applicant incurring unnecessary or wasted expense in the appeal process in this regard.

RfR 3

20. I have been referred to appeal decisions¹ which reach different conclusions as to whether housing should be permitted on BMVAL in the district. Although one of these decisions is much more recent than the other, they show it is not a simple issue with regard to housing land supply matters, and that every case must be judged on its merits. I have concluded that planning permission should be granted in this case, but that does not mean it was unreasonable for the Council to reach an alternative view, especially taking into account the various objections to the loss of agricultural land received from neighbouring residents and the detailed points made by Aldingbourne Parish Council.
21. I shall comment on the balancing exercise undertaken by the Council below, but I do not find that the Council acted unreasonably in referring to RfR 3 in its decision notice, or that this led to the applicant incurring unnecessary or wasted expense in the appeal process.

RfR 4 and 5

22. The Council was engaged with the applicant in advance of the Hearing to complete a legal agreement which would address RfR 4 and 5. The submissions made on these points by the main parties were limited, demonstrating that they both anticipated a completed legal agreement would be provided before my Appeal Decision was to be issued.
23. It was agreed between the main parties that a legal agreement was necessary to make the proposed development acceptable. As with the absent bat survey referred to by RfR 2, even if a completed legal agreement had been provided before the Council issued its decision, it appears likely that the application would have still been refused due to the views reached by the Council on other matters. It was not unreasonable for the Council to include RfR 4 and 5 in its decision notice and this did not lead to the applicant incurring unnecessary or wasted expense in the appeal process.

Other Matters

24. The balancing exercise undertaken in the Summary section of the Council's officer report is basic and lacks detail, but it shows paragraph 11 of the Framework was taken into consideration. It explains that the Council considered significant harm would be caused to the living conditions of neighbouring residents and that the loss of Grade 2 agricultural land would not be outweighed by the proposal. It did not specifically identify how much weight the Council placed on the adverse impacts or the benefits associated with the proposal.
25. The Council's Hearing Statement explains that it assigned 'substantial/significant' weight to the benefits associated with the provision of up to 89 dwellings. The Hearing Statement also clarifies it was the Council's view that the adverse impacts of the proposal outlined in RfR 1 and 3 should

¹ Appeal refs: APP/C3810/W/19/3234972 and APP/C3810/W/22/3309365

attract significant weight individually, which significantly and demonstrably outweighed the benefits of the proposal when considered cumulatively.

26. Had the Council carried out a more detailed balancing exercise in its officer report, it may have reached a different decision. However, the significant weight the Council assigned to the adverse impacts outlined in RfR 1 and 3 suggest it is likely that the Council would have still refused planning permission, even if RfR 2, 4 and 5 had been addressed.
27. The balancing exercise undertaken by the Council was poorly detailed and executed. However, I am satisfied that it was sufficient, in basic terms, to demonstrate that the Council had considered all relevant matters before reaching the conclusion that planning permission should be refused, with regard to paragraph 11 of the Framework.
28. The Council's behaviour in refusing the planning application was not unreasonable, even though its Planning Officer had previously informally advised the applicant that the planning application would be recommended for approval. That advice was corrected less than a month later, and over a month before the application was eventually refused.

Conclusion

29. I have found that it was not unreasonable for the Council to conclude that the proposal would cause unacceptable harm to the living conditions of neighbouring residents on the basis of the information submitted with the planning application. Taking the Council's decision making process and all reasons for refusal into account, it was not unreasonable for the Council to refuse the planning application for the 5 reasons stated in its decision notice, even on the basis of a poorly worded balancing exercise.
30. It was, however, unreasonable for the Council to pursue RfR 1 following the submission of the NIA as part of the applicant's Hearing Statement. That unreasonable behaviour led to the applicant incurring some unnecessary expense in the appeal process when preparing for the Hearing in respect of RfR 1 after the submission of statements, and when spending time discussing RfR 1 at the Hearing.
31. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council failing to concede RfR 1 following the submission of the NIA and a partial award of costs is therefore warranted.

Costs Order

32. 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 Arun District Council shall pay to Gleeson Land, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in: (i) preparing for the Hearing after the submission of Gleeson Land's Hearing Statement in respect of the first reason for refusal stated in the Council's decision notice only; and (ii) attending and taking part in the Hearing in respect of the first reason for refusal stated in the Council's decision notice only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. The applicant is now invited to submit to Arun 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.

L Douglas

INSPECTOR

Richborough