

Appeal Decision

Hearing held on 10 September 2024

Site visit made on 10 September 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal Ref: APP/C3810/W/24/3343785

Land West of Drove Lane, Main Road, Yapton, West Sussex BN18 0DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Tice of Landlink Estates Ltd against the decision of Arun District Council.
 - The application Ref is Y/68/23/PL.
 - The development proposed is erection of 20 dwellings (including 6 affordable units) with new access, open space, landscaping, sustainable drainage, biodiversity mitigation and associated works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Andrew Tice of Landlink Estates Ltd against Arun District Council. That is the subject of a separate decision.

Preliminary Matters

3. The second reason for refusal relates to the failure to secure the provision of affordable housing. A completed planning obligation has now been provided which purports to secure affordable housing. I shall return to this matter later.
4. The third reason for refusal relates to the failure to secure a travel plan. A Travel Plan Statement has been provided and the Council have now confirmed that its implementation could be secured by a condition and have suggested wording for that. I have no reason to consider otherwise.
5. The fourth reason for refusal relates to the failure to secure a contribution towards school transportation. This was discussed at length during the hearing and an amended unilateral undertaking was provided shortly after. I discuss this later.
6. During the determination of the appeal the government published a consultation on proposed reforms to the National Planning Policy Framework (the 'Framework') and other changes to the planning system, and made a

written ministerial statement regarding housebuilding. Both parties were invited to provide comments on these insofar as they relate to the appeal proposal and I have taken their comments into account.

Main Issues

7. In light of the above, the remaining main issues are:
- i. whether the appeal site would be suitable for housing, with particular regard to local policies for the location of housing;
 - ii. the effect of the loss of Best and Most Versatile agricultural land (BMV); and
 - iii. whether the Yapton Neighbourhood Plan (YNP) contains policies and allocations to meet its identified housing requirement.

Reasons

Location

8. It is not disputed that the site is beyond the Built-up Area Boundary (BUAB) of Yapton. Policy BB1 of the YNP (November 2023) states that development proposals outside the BUAB will not be supported unless they accord with policy C SP1 of the Arun Local Plan (2018) (ALP). That policy states that land outside the BUAB is defined as countryside and goes on to set out the criteria for acceptable development therein. Both parties agreed at the hearing that the proposal would not fit into any of the criteria. The proposal would therefore fail to accord with policies BB1 and C SP1.
9. It is recognised that the site was considered developable in the HEELA¹, albeit that was before the current application was submitted, and would score well against the criteria in the Council's Interim Housing Statement of February 2021. Indeed, The Council agree that as the site is on the edge of the BUAB, it is suitably located in terms of having access to the shops and services within the village by sustainable modes of transport. Nonetheless, it is outside the BUAB and so is contrary to development plan policy.

BMV

10. The appeal site currently comprises a field overgrown with ruderal vegetation. It is agreed by the parties that the site is Grade 2 agricultural land, as is most of the land around Yapton. Over the last few years, the field has mainly been farmed for wheat, with salad production in one year.
11. The field is small compared to others nearby, including that immediately to its west which, like the appeal site, is farmed by Langmead Farms. Also it is not a regular shape, being thinner at its east end. When using large, modern farming machinery, its irregular shape and small size results in the same areas being repeatedly overrun, hence compacting the soil. This therefore reduces the amount of productive land, and as these areas would represent a large proportion of the small field, it makes the field inefficient to farm. It is estimated that the field has a yield 30-40% lower than adjoining fields and would constitute only 0.1% of the total production for Langmead Farms.

¹ The Council's 2021 Housing & Economic Land Availability Assessment

12. The western boundary of the appeal site is mainly demarked by a hedge and a ditch. This clearly prevents it from being farmed contiguously with the adjacent larger field and, although there is an access between the fields, would effectively render it an independent field. In the past the site has been farmed in connection with that neighbouring field, but modern farming machinery would now make this impractical. As such it is unlikely that the site will be used for agricultural production again and instead would remain fallow or used for other cover crops.
13. Policy E1 of the YNP states that the development of grade 1 and 2 agricultural land will be refused unless it involves granting permission for any additional housing sites required by YNP policy H1 to meet objectively assessed housing need in the neighbourhood plan area.
14. Policy H1 identifies that the housing requirement for Yapton over the plan period (2011 to 2031) will be met by a combination of dwellings outside the BUAB which have already been consented, windfalls within the BUAB, strategic allocations set out in the ALP, and two allocations previously identified in the 2014 YNP which have now been consented and are currently being built out. As the appeal site does not fall into any of these four categories it is not needed to meet the housing needs as set out in policy H1. Consequently, the development would be contrary to policy E1.
15. I accept the site may not be of any commercially viable agricultural use. However, it could still be used for grazing or environmental schemes and in any case remains to be grade 2 agricultural land. As such I give considerable weight to the conflict with policy E1.
16. Policy SO DM1 of the ALP says that the use of grade 2 agricultural land for any development not associated with agriculture, horticulture or forestry will not be permitted unless the need for the development outweighs the need to protect such land. I turn to the weighing up of these competing needs in the planning balance later.

Yapton Neighbourhood Plan

17. As set out above, the YNP sets out how the identified housing needs for Yapton will be met over the plan period. This is based on the wider housing needs identified in the ALP. Though the ALP does not identify a specific figure for individual villages, in policy H SP1 it identifies a need for 1,250 houses across the District on non-strategic sites, in addition to existing neighbourhood plan allocations, to be set out in a Non-Strategic Sites Allocations Development Plan Document (NSSA).
18. Work on the NSSA was commenced but not progressed and it was withdrawn in 2020. The YNP states that an indicative figure of 80 houses for Yapton had been suggested as part of the NSSA as a proportion of the 1,250 set out in the ALP, but at the hearing the District Council could not confirm how the figure of 80 had been reached.
19. The YNP states that at the time of the preparation of the NSSA, permission for 113 houses outside the BUAB had just been granted. These are included in the figures for housing outside the BUAB. In total, the YNP calculates that since the start of the plan period in 2011, permissions have been granted for

1,113 houses in Yapton². I note this includes an additional 13 houses across the two allocated sites and an additional 50 on the strategic site. The YNP therefore considers Yapton has already made sufficient contribution to the District's housing supply and so it does not allocate additional sites.

20. This approach was taken with agreement of the District Council. At that time, and as set out in the YNP and as noted in representations made to the examination, the Council could not demonstrate a five-year supply of housing land. In view of that, the examiner noted that the YNP should recognise the housing delivery challenges faced by the District Council, monitor any changes which may arise to the strategic context in the District, and monitor the delivery of the policies in the YNP.
21. The appellant suggests that by relying on previously allocated, and now developed sites, the YNP in fact allocates no sites. They also suggest that, as the Council still cannot demonstrate a five-year supply of housing land, the indicative housing requirement for Yapton is not up to date and is underestimated. These are arguments they also put forward to the examiner in their representations to the YNP examination. Nonetheless, the examiner considered the YNP's approach very carefully and found that, given the Local Plan context and the significant contribution Yapton had made to housing delivery, the approach taken by the YNP was informed and well-considered. I have no persuasive reason to come to a different view on the approach taken, particularly as the YNP is not yet a year old and little has substantially changed.
22. The examiner was satisfied that regard was had to national policy, albeit the report does not explicitly refer to paragraph 97³ of the national Planning Practice Guidance (PPG) section on neighbourhood planning. However, on the basis that the examiner considered policy H1 appropriately set out how the indicative housing requirement figure would be met, and as that indicative figure was not accounted for within the local plan strategic allocations or windfall allowance, I consider there to be no conflict with this paragraph of the PPG.
23. I also recognise that no Strategic Environmental Assessment of the YNP was done, which may have been required had new allocations been identified. However, the examiner did not consider that this meant the YNP did not adequately address housing need, and I have no reason to consider otherwise.
24. The appellant also suggests that the YNP does not account for the latest evidence of local housing need as set out in paragraph 68 of the Framework, as the Arun Housing Need Review was published in May 2023, some six months before the adoption of the YNP. However, notwithstanding that the examiner's report was also published in May 2023 so may not have been before the examiner, this was a high-level review, advising the Council of the need to identify land for a further 11,250 units across the district. It provided no strategy to realise this nor did it provide any figure for Yapton to supersede the indicative figures previously provided.

² The Council's statement of case identifies that this figure now stands at 1,254 houses.

³ Which sets out, in the context of the National Planning Policy Framework, what 'policies and allocations to meet its identified housing requirement' means for neighbourhood plans

25. In summary, I consider the YNP contains policies and allocations to meet its housing requirement.
26. The consequence of this is that there is therefore no conflict with paragraphs 67 and 68 of the Framework as an indicative housing requirement figure was provided and a neighbourhood plan policy adopted to meet that. As a result, both strands of paragraph 14 of the Framework are met which require a neighbourhood plan to be less than five years old and to contain policies and allocations to meet its identified housing requirement.
27. In these circumstances and where paragraph 11d) applies, which both parties agree it does, paragraph 14 of the Framework says that the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits. As set out above, the development would conflict with YNP policies BB1 and E1. I therefore give considerable weight to this factor and I undertake the balancing exercise below.

Planning balance

28. As the Council do not have a five-year supply of housing land and the provisions of paragraph 11d) of the Framework apply, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole.

Adverse impacts

29. Paragraph 180 of the Framework seeks to maintain the intrinsic beauty of the countryside. The proposal by constituting the development of grade 2 agricultural land in the countryside, would conflict with this. This would be an adverse impact of considerable weight. In addition I give considerable weight to the conflict with paragraph 14 of the Framework, as set out above.

Housing land supply

30. Paragraph 60 of the Framework seeks to significantly boost the supply of homes by ensuring that a sufficient amount of housing land is brought forward, and paragraph 77 identifies that local authorities should identify and update annually a five years supply of housing. A factor to weigh in the planning balance, therefore, is the extent of the Council's shortfall of housing land supply against that five year requirement. The ALP identifies a housing requirement of 20,000 homes (or 1000 per year) over the 2011 – 2031 plan period. However as the strategic policies are more than five years old and have not been updated in the last five years, the local housing need should be calculated using the standard method set out in the PPG. The calculated need is not disputed by the appellant.
31. There is however dispute regarding housing supply. This is in regard to the large site commitments, strategic site allocations, deliverable HEELA sites within BUABs and the windfall allowance. Having reviewed all these, the appellant suggests the supply amounts to 3.5 years using the standard method, though they suggest that were it considered against the strategic policies, the supply would only be around 2.3 years. The Council calculate a supply of 4.17 years as set out in their most recent annual monitoring report

dated January 2024. Although some time was spent at the hearing reviewing the supply, to my mind the figures achieved using the standard method are not so dissimilar such that the difference has any determinative bearing on my decision. Both figures show a significant shortfall.

32. In that context the provision of 20 homes towards the Council's supply at a time where there is a District-wide shortfall, would be a moderate benefit given the modest quantum of development.

Other benefits

33. A planning obligation has been provided which seeks to ensure that six of the proposed units would be affordable. This obligation meets the tests set out in the Community Infrastructure Levy Regulations and I am therefore able to take it into account. This would reflect policy in paragraph 63 of the Framework, which supports the provision of a range of housing, and is an additional benefit of moderate weight given the modest number of units.
34. There would be some benefit arising from the open space provided at the western end of the development. However due to its position at the end of the site furthest from the remainder of the village, the fact that access to it would either be through the development or involve crossing Main Road on a bend with restricted visibility, it would not be likely to be frequently used by many occupiers of the village. It would therefore be of limited wider benefit.
35. There would be a modest benefit resulting from an increase in biodiversity in terms of both habitat and hedgerow units, which would be supported by paragraph 186 of the Framework. There would also be a minor economic benefit locally during the construction phase.

Heritage assets

36. The Council, in their officer report, identified low level harm to the setting of the Yapton Main Road/Church Lane Conservation Area (YCA) which is on the opposite side of Drove Lane, as the proposal would involve the development of agricultural land.
37. The main significance of this conservation area is that it contains the historic core of this part of the village. However, the majority of the houses in the village are not within the YCA. As such, whilst the appeal site lends a rural surround to the conservation area, this provides only a limited contribution to its significance. As such, the effect of the development on the rural setting of the YCA would cause less than substantial harm to its significance.
38. Paragraph 208 of the Framework states that where less than substantial harm would be caused to a designated heritage asset, that harm should be weighed against public benefits. I consider the public benefits outlined above, primarily the provision of houses, including affordable homes, at a time when the Council cannot demonstrate a sufficient supply, and the benefits to biodiversity, would outweigh the less than substantial harm to this designated heritage asset.
39. The officer report also refers to the short terrace of four dwellings on the opposite side of Main Road, and the former Chichester and Arundel canal to

the rear of the site as being non-designated heritage assets. However whilst a low degree of harm is stated, this is not elaborated further.

40. The cottages comprise a pleasant terrace but the canal is largely overgrown, though its route is still apparent. Both assets are of historical interest. The development would be mostly screened from these assets by vegetation. As such, I find no harm to the historic significance of these heritage assets.

Summary

41. When assessed against the policies of the Framework as a whole, I consider the adverse impacts of the proposal are the development of grade 2 agricultural land in the countryside beyond the BUAB contrary to the neighbourhood plan. The benefits are the provision of 20 houses, including 6 affordable units, at a time when, even if I accept the appellant's figure for the extent of the shortfall, there is a significant shortfall in housing land supply, as well as the modest benefit to biodiversity and the other minor benefits identified. Overall I consider the adverse impacts would significantly and demonstrably outweigh benefits. The presumption in favour of sustainable development therefore does not apply.
42. There would also be conflict with ALP policies C SP1 and SO DM1 and YNP policies BB1 and E1. Though these could be deemed to be out of date by virtue of the Council's housing land position, they are generally consistent with the Framework and can be given weight.

School transport contribution

43. A substantial part of the hearing was spent discussing the need and value of a contribution towards school transport. A unilateral undertaking has been submitted which purports to secure that contribution and mitigate the effect of the development. However as it is not a benefit of the scheme it cannot count positively in its favour, and so as I am dismissing the appeal on other grounds I need not consider this issue further.

Conclusion

44. Overall the proposal would conflict with the development plan taken as a whole and there are no other considerations, including the policies of the Framework, that lead me to a decision other than in accordance with the development plan. As such the appeal is dismissed.

A Owen

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Lisa Jackson	Jackson Planning (Agent)
Simon Blandford	Savills
Nick Billington	SLR
Jan Kinsman	EFM
Jacintha Carty	Landlink Estates Ltd

FOR THE LOCAL PLANNING AUTHORITY

Simon Davis	Principal Planning Officer
Tracey Dunn	West Sussex County Council
David Innes	representing West Sussex County Council
Cllr Amanda Worne	Ward Councillor for Yapton

INTERESTED PARTIES

Vicky Newman	Yapton Parish Council
Jim Payne	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Copy of national Planning Practice Guidance paragraph 97 Ref ID 41-097-20190509

Ormiston Six Villages Academy Admissions data 2024/25

Summary Notes – Secondary Education Transport

Completed Planning Obligation

Costs application on behalf of Landlink Estates Ltd

DOCUMENTS SUBMITTED AFTER THE HEARING

Costs response from Arun District Council

Final costs comment from Landlink Estates Ltd

Completed unilateral undertaking



Costs Decision

Hearing held on 10 September 2024

Site visit made on 10 September 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Costs application in relation to Appeal Ref: APP/C3810/W/24/3343785 Land West of Drove Lane, Main Road, Yapton, West Sussex BN18 0DX

- 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 Landlink Estates Ltd for a partial award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for erection of 20 dwellings (including 6 affordable units) with new access, open space, landscaping, sustainable drainage, biodiversity mitigation and associated works.
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Decision

1. The application for a partial award of costs is refused.

The submissions for Landlink Estates Ltd

2. The costs application was made in writing, but submitted at the hearing and can be summarised as:
 - The Council failed to co-operate with the appellant and failed to agree the statement of common ground (SoCG);
 - The Council have failed to determine cases in a consistent manner with regards to their requests for secondary school transport contributions;
 - The Council prevented development which should clearly be permitted having regard to its accordance with Arun Local Plan policies INF SP1 and INF SP2;
 - The Council required the appellant to enter into a planning obligation which does not accord with relevant national policy;
 - The Council failed to produce evidence to substantiate why a contribution to school transport was necessary taking account of any capacity at the catchment secondary school, the value of the contribution, the period for which the contribution would address and possible alternative options.

The response by Arun District Council

3. The Council's response was made in writing after the hearing. It can be summarised as:
 - The Council did engage with the appellant;
 - The Council have been consistent in their requests for contributions;

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- The Council have justified their approach in using position papers to facilitate development;
 - The Council have explained why the contribution sought would meet national policy regarding the Community Infrastructure Levy;
 - The Council have justified their reason for refusal.

Reasons

4. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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.
5. It goes on to state that local planning authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal or if they behave unreasonably with regard to procedural matters at the appeal.
6. A SoCG was agreed which related to the appeal as a whole. It showed that there was disagreement regarding the fourth reason for refusal. A separate SoCG between the appellant and West Sussex County Council regarding this particular reason for refusal was drafted and has been commented on by both parties. It is clear that there was, and remains to be, disagreement on many aspects. As such while an agreed SoCG on this issue may have provided a little more focus, the draft provided clearly shows where disagreements persist. Even if the Council had signed the SoCG, it may not have necessarily resulted in any less effort or expense on the part of the applicant.
7. Furthermore though there were periods where the Council did not respond in a timely manner, given the disagreement between the parties I do not consider it likely that more frequent engagement would have materially resolved any issues. Certainly over recent weeks there has been regular correspondence between the parties with no resolution.
8. Turning to more substantive matters, the appellant provided a table showing planning decisions made since the Council began implementing their current approach to school transport, where contributions were not sought. This including a previous application for the appeal site. However I understand correspondence between the County Council and the District Council was not efficient or effective hence the failure to secure a contribution on that occasion. Indeed this appears to explain some of the other cases referred to too when contributions maybe should have been secured, but were not. Whilst this demonstrates bad practice, I do not consider this shows clear inconsistency in the general approach to securing such contributions.
9. The Council's position paper, dated September 2022, explained that due to growing demand for secondary school places in Arun and the delays to the delivery of a school to meet that demand, the County Council would object to any further development generating secondary school age children. To avoid this significant problem, the County Council proposed that developments provide a contribution to fund the transportation of pupils to other schools outside the District which do have capacity.
10. Policy INF SP1 and INF SP2 relate to the provision of infrastructure, including a new school, and the funding of that through planning obligations. The

contributions sought would not conflict with these policies. Moreover, the PPG advises that planning obligations can secure contributions for both temporary and permanent needs such as school transport costs. As such it is not unreasonable for the Council to use this method to collect contributions rather than through CIL or general taxation. My view on this is consistent with the Inspector of an appeal last year¹, who found that a legal agreement to secure a contribution to school transportation was a reasonable solution and that it met the three tests set out in Regulation 122 of the Community Infrastructure Levy Regulations, i.e. would be necessary to make the development acceptable in planning terms, would be directly related to the development; and would be fairly and reasonably related in scale and kind to the development

11. The position paper sets out the detail of how the contribution would be calculated. It is understood that this has not been subject of viability testing, or formal public consultation. Nonetheless, as set out above, the contributions sought would meet the tests set out in Regulation 122.
12. The appellant suggests that there is sufficient capacity at the catchment school and therefore there would be no need for school transport contributions at all. Evidence provided at the hearing shows that at the start of 2024/25 the local catchment school offered places to 11 pupils, with no older siblings at the school, from outside the catchment area. However, this just relates to one school year. In future years capacity across the school is promptly reached and then exceeded based on anticipated housing development. It is also understood a district-wide approach is necessary otherwise the introduction of additional pupils from the appeal proposal may have a consequential effect on the need for other pupils to require transport.
13. Moreover although some nearby schools have been able to increase capacity, it is understood that as the catchment school is an academy, as are many of the secondary schools locally, and not local authority maintained, the County Council have no power to direct additional pupils are taken.
14. On these substantive matters, I am satisfied that it was not unreasonable for the Council to require the school transport contribution. Consequently whilst I recognise the disagreement regarding the precise value of the amount, and the period for which it is sought, these aspects are part of the parties' detailed cases and so I do not consider the appellant's expense on this was wasted.
15. Overall, it has not been demonstrated that the Council behaved unreasonably resulting in unnecessary or wasted expense on behalf of the applicant, as described in the PPG. Therefore, the application for an award of costs is refused.

A Owen

INSPECTOR

¹ Appeal Ref APP/C3810/W/23/3323858