



Appeal Decision

Hearing held on 13 and 14 August 2024

Site visit made on 14 August 2024

by **S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal Ref: APP/U1430/W/24/3339879

Land off Turkey Road, Turkey Road, Bexhill-on-Sea

- 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 Michael Birch of Bellway Homes Ltd (South London) against the decision of Rother District Council.
 - The application Ref is RR/2022/2131/P.
 - The development proposed is the erection of 89 residential dwellings (including affordable housing), ancillary structures, new access road from Turkey Road, internal roads, car parking, landscaping and public open space, drainage features, and other associated and necessary works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 89 residential dwellings (including affordable housing), ancillary structures, new access road from Turkey Road, internal roads, car parking, landscaping and public open space, drainage features, and other associated and necessary works at land off Turkey Road, Bexhill-on-Sea, in accordance with the application Ref: RR/2022/2131/P, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Bellway Homes Ltd (South London) against the decision of Rother District Council. As agreed at the Hearing the application was submitted in writing and dates were agreed in respect of the Council's response and the appellant's final comments. This application is the subject of a separate decision.

Preliminary Matters

3. The original application sought permission for 98 dwellings. This was reduced to 89 during the Council's consideration of the proposal but the description of the development remained unchanged. However, the scheme was amended to increase the landscape buffer on the western side of the site, alter the layout and reduce the density of development. The Council consulted and determined the proposal based on these amendments, and I have done the same.
4. A draft planning obligation was provided prior to the Hearing. It was discussed at the Hearing when it was apparent that amendments were required. A date for submission of an executed obligation was agreed and it was duly received on 11 September. I refer to its provisions in reaching the decision.

Main Issues

5. The main issues are whether the proposed development would:
 - a) Provide adequate living conditions for future occupants with regard to noise, dust and other pollutants:
 - b) Unreasonably restrict the future economic growth of the Ibstock quarry and brickworks.

Reasons

Background and policy context

6. The appeal site is an undeveloped field of approximately 4 hectares on the edge of the built-up area of Bexhill and beyond the existing settlement boundary. It comprises open grassland with some trees and scrub and a collection of small stables. Most of its southern boundary abuts the rear gardens of dwellings along Turkey Road. The existing entrance is from a narrow track alongside the site's eastern boundary which also provides access to a short row of terraced houses. To the east of the track is a site allocated for some 30 dwellings. To the north-east is Bexhill cemetery.
7. However, of greater significance to the assessment of the proposal's suitability for accommodating a housing development is the site's proximity to the Ashdown Brickworks and Quarry, which is a Minerals Safeguarding Area (MSA) and lies immediately to the west. The extraction of clay and the manufacture of bricks are frequently co-located activities. Ashdown Brickworks and Quarry is an example of such an operation and has a history of brickmaking which dates back to 1900. Clay is extracted from two pits within the north and west of the MSA. The brickworks manufacturing building, which includes large kilns, an outside operational and brick stacking area, and a loading area for lorries, are located immediately to the west of the appeal site. Activities on the site are permitted to take place on a 24-hour basis, although they may not do so all the time. These existing permitted operations generate noise and dust from a variety of processes and vehicles.
8. Policy SP8 of the East Sussex, South Downs and Brighton & Hove Waste and Minerals Sites Plan 2017 (the MSP), identifies Ashdown Brickworks as an MSA and states that proposals for non-minerals development on or near the MSA that would sterilise or prejudice the extraction of the mineral resource, or result in incompatible development, will be strongly resisted. A partial review of this plan has recently been completed and following the Examination in Public it is anticipated the Revised Policies Document will be adopted shortly. Its emerging policies therefore carry significant weight.
9. Policy RM3 will supersede Policy SP8 and states that non-minerals development that would sterilise or prejudice the extraction of the mineral resource should not be permitted unless it can be demonstrated within a Mineral Resource Assessment that the development is not incompatible with any permitted minerals operation. This is consistent with paragraph 216 of the National Planning Policy Framework 2023 (the Framework) which requires adopted policies to ensure that mineral resources of local and national importance are not sterilised by non-mineral development where this should be avoided.

10. The Planning Practice Guidance minerals guidance (MPPG) recognises that mineral resources can only be extracted where they occur, so locational options are limited. It is therefore necessary to protect minerals from non-minerals development. The MPPG then sets out guidance in relation to a range of environmental issues, including noise, dust and lighting that need to be addressed when determining applications for new minerals operations with a view to reducing the impacts on the surrounding areas.
11. Paragraph 193 of the Framework is also relevant to this case. It states that existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

Living conditions with permitted operations at Ashdown Brickworks

a) Noise

12. The MPPG¹ states that mineral planning authorities should aim to establish a noise limit through planning conditions at noise-sensitive properties that does not exceed the background noise level (LA_{90,1h}) by more than 10dB(A) during normal working hours. In any event the total noise from a minerals operations should not exceed 55dB(A) LA_{eq,1h} (free field). For any operations during the period 22.00-07.00 noise limits should be set to reduce to a minimum any adverse impacts, without imposing unreasonable burdens on the mineral operator. In any event the night-time noise limit should not exceed 42dB(A) LA_{eq,1h} (free field) at a noise sensitive property.
13. A total of 17 dwellings (plots 1-14 and 87-89) are proposed along the western side of the appeal site, 11 of which would share a boundary with the 5m buffer zone that would separate the site from the brickworks. The proximity of these homes to existing permitted activities within the MSA would undoubtedly result in future occupants being exposed to noise disturbance. In these circumstances it is necessary for the appellant, as the 'agent of change', to demonstrate that this would not result in unacceptable living conditions for those residents.
14. The appellant undertook a Noise Assessment² having consulted with the Council's environmental health officer (EHO) about the appropriate noise level standards to apply to the site. It was agreed that the site's suitability for residential development in relation to ambient noise levels would be determined having regard to the aforementioned advice from the MPPG, and in accordance with standards set out in BS8233:2014 for both external and internal noise levels.
15. Information about the existing noise levels was provided from measurements at four noise monitors on the site. Sites MP1 and MP2 were positioned close to the boundary with the brickworks, alongside the brick stacking area. MP3 was to the east of the vegetation which straddles the middle of the appeal site. ST1 was close to Turkey Road where traffic is the dominant noise. The results are set out in the following table:

¹ PPG Paragraph: 021 Reference ID: 27-021-20140306

² Ardent Report: Noise and Vibration Assessment April 2023 (Report Ref: 2107150-11B)

Monitor Position	Ambient Noise Level dB L _{Aeq,T}		Typical background sound level dB L _{A90,T}		Night-time Max noise level dB L _{AFmax}
	Daytime	Night-time	Daytime	Night-time	
MP1	52	51	48	47	65
MP2	54	47	46	44	67
MP3	45	45	41	41	65
ST1	61	-	49	-	-

16. These results demonstrate that the area is already affected by noise from the current operations at the brickworks. Based on this, the appellant concluded that to ensure no adverse effects for future occupants of the proposed housing development, it would be necessary to include mitigation measures. The predicted sound levels were therefore predicated on the provision of a 5m acoustic fence along a significant proportion of the shared boundary. The modelling was based on the worst-case scenario in terms of noise generated by the existing permitted operations, assuming simultaneous operation of the quarrying activity and major noise sources from the brickworks. The outputs from this modelling with the fence in place were presented in the form of a map³. This showed that daytime external noise levels would not exceed 55dB(A)Leq anywhere on the appeal site, although they would be between 50-55dB(A)Leq in the rear gardens of a small number of properties on the western side of the development.
17. A second map illustrated the night-time worst case scenario distinguishing only between levels above and below 42dB(A)Leq⁴. This showed that properties over a larger part of the site would experience excessive levels of external night-time noise even with the acoustic fence. However, the Ardent report concluded that standard glazing would reduce the internal noise to acceptable levels. The Council's EHO accepted these conclusions. In his response to the application his primary concern was the need to secure the proposed mitigation measures in perpetuity since without them, the proposal would have been unacceptable.
18. Throughout the Council's consideration of the proposal Ibstock, the operator of the Ashdown Brickworks, consistently objected to the introduction of housing so close to their site because of the impact their operations would have on future occupants. In respect of noise, they did not consider the proposed acoustic fence would provide sufficient mitigation to prevent complaints. Following the Council's refusal of the scheme they appointed AECOM to support their objection through the appeal proposal. They submitted an appeal statement⁵ which contested the assumptions used within Ardent's assessment of the proposal.
19. AECOM contended that the assessment should have made a distinction between the operation of the quarry and the brickworks as these are separate and different activities. They considered that noise emanating from the brickworks, should be assessed as an industrial process based on standards set out in BS4142:2014. This provides procedures and methods for assessing noise to determine if it will cause complaints from residential properties arising from

³ Appendix H of Ardent Report: (map after page 47)

⁴ Appendix H of Ardent Report: (map before page 48)

⁵ AECOM Representation to the Planning Inspectorate, June 2024

commercial and industrial activities. If applied, BS4142 would suggest a more stringent noise limit of 49dB(A)Leq, than the limits that would apply to quarrying activities based on BS8233. This would have been more consistent with the noise condition imposed on quarrying activities in 2018 when there was a review of the old mineral permission (MR/10, May 2003). However, that condition imposed this lower noise limit in respect of more distant locations, making them easier to achieve. If this lower limit was applied to the appeal site, the proposed acoustic fence would not provide adequate mitigation to reduce noise to acceptable limits.

20. Whilst I understand AECOM's concerns in relation to the standards, the co-location and inter-relationship between a clay quarry and an associated brickworks is not unusual. The operation as a whole will be experienced as a collective noise source, so I consider separating them for the purposes of the assessment would not be appropriate. Although the assessment focussed on noise levels from fork-lifts and HGVS from the brickworks' operation, nevertheless, it sought to present a worst-case scenario with simultaneous operation of the quarry and the brickworks. In reality this would appear to be unlikely, particularly as clay extraction is not carried out throughout the year.
21. AECOM's second criticism related to the baseline adopted in Ardent's assessment. The MPPG refers to limiting noise so that it does not exceed the background noise level (LA90,1h) by more than 10dB(A). Only if this would be difficult to achieve does it refer to the total noise not exceeding 55 dB(A). As can be seen from the above table, the background noise levels presented in the Ardent report⁶ are less than 10dB(A) below the criteria adopted. This was another reason for contesting the appropriateness of assessing the impact of the proposal against the 55dB(A) daytime limit. In support of this approach, they stated that the Environmental Statement associated with the application for clay extraction in 2003 referred to above, based its assessment of background noise levels on sites that were some distance from the quarry.
22. However, in my view to suggest that the background noise level should be assessed in some distant location or in the absence of the current operation at the Ashdown Brickworks would not accurately represent existing reality. The noise from the works forms part of the background and context to this part of Bexhill and its immediate environs. Furthermore, BS4142 differs from BS8233, insofar as it does not prescribe specific noise limits, but requires any assessment to take account of the context in which a proposal is being considered. It was put to me that there is a fundamental difference between introducing a new, noisy activity (such as a new quarry) into an area that was previously tranquil, and bringing new land uses and activities (including homes) into an area that already experiences a degree of noise. I see no reason to disagree with this proposition. I am therefore satisfied that as long as the assessment considers the worst-case scenario for noise generating activities from the Ashdown brickworks and quarry, the application of the limits set out in the MPPG and BS8233 is appropriate in this case.
23. Nevertheless, whilst mitigation measures to reduce noise to those levels should prevent undue harm to the health of future residents, it does not follow that those residents will not complain to Ibstock about the noise of their operations. Where significant noise is caused by an unknown or anonymous source it is

⁶ Tables 3 and 4 of the Ardent report

difficult for those affected to make complaints. However, in the case of the brickworks, residents will be aware of the source of noise nuisance making it more likely that they will seek to have it addressed. There was limited evidence about recent noise complaints to the Council. This is likely to be because Ibstock actively seeks to address concerns by liaising with the local community and introduces minor adjustments in working practices where they can. However, for complaints to be considered serious, it would be necessary to provide evidence demonstrating that the MPPG thresholds were being breached regularly or frequently. As the modelling based its predictions on the worst-case scenario, I consider this is only likely to occur in exceptional circumstances, in which case such complaints would not place any unreasonable restrictions of the currently permitted operations.

24. Although minimal details about the fence were presented with the appeal, I was assured at the Hearing that a 5m acoustic fence would be effective in reducing external noise at ground level. It would be sited on higher ground than the brickworks due to the difference in levels between the two sites. It would be a substantial structure with specific features to absorb and deflect noise. Following this discussion wording of a pre-commencement condition, which includes reference to the appropriate British Standard, has been agreed by the parties. This would ensure that the acoustic barrier would be fit for purpose and durable over 20 years. In addition, the S106 agreement includes a mechanism to ensure that the responsibility for maintenance and management of the fence would be secured in perpetuity. I am therefore satisfied that this would provide future residents with permanent protection against excessive external noise at ground level.
25. The proposed fence would be less effective at reducing noise at first floor level where the rear windows of dwellings on the western side of the development would face the brickworks. As these rooms are likely to be bedrooms, I consider there is a significant risk of night-time sleep disturbance. The Ardent report concluded that with suitable construction materials and standard double glazing, internal noise levels would be reduced to acceptable levels. This conclusion was supported in the appellant's rebuttal statement by Cass Allen⁷.
26. However, the diagram in Appendix H of the Ardent report does not demonstrate that conclusively, as a large number of properties are shown to have night-time noise levels at their rear elevations of greater than 42dB(A)Leq. To my mind this could result in noise complaints which Ibstock would have difficulty addressing given that they are permitted to operate on a 24-hour basis. At the Hearing, the appellant offered to provide a higher standard of glazing which could be incorporated into the scheme. Subsequently the wording of an appropriate condition has been agreed which requires the design of 17 individual properties on the western side of the site to achieve internal night-time noise levels of 27 dBLAeq in bedrooms and 32 dBLAeq in living/dining rooms. I am satisfied that this would provide adequate protection for future occupants with their windows closed.
27. Even with provision of effective glazing and ventilation to reduce noise and prevent overheating, future residents could still choose to open their windows, especially in summer periods of hot weather. In doing so they would be likely to suffer some noise disturbance. However, anyone who chooses to live on the

⁷ Cass Allen: Air quality, dust & noise rebuttal statement, submitted 25/7/24

development, particularly on its western side, would be aware of its location and its proximity to the brickworks. Any complaints made about noise when future occupants had their windows open would be considered in that context and could not reasonably be a justification for restricting Ibstock's operations.

28. This leads me to conclude that, subject to mitigation measures comprising a 5m acoustic fence and the enhanced glazing and ventilation referred to above, the living conditions of future occupants would be adequately protected from unacceptable noise disturbance. Consequently, the proposal would be compatible with the current operation of the quarry and brickworks without imposing unreasonable burdens on its operators.

a) Dust

29. The extraction of clay, its storage on the MSA and the manufacture of bricks are activities which generate dust. An operational dust assessment was undertaken using a combination of quantitative observations and a qualitative risk assessment considering the sources of dust and PM₁₀. The quantitative dust deposition monitoring indicated that whilst most of the appeal site is at low risk of impacts, an area within the north-west corner of the site is likely to experience a higher risk of dust deposition. However, as actual risks will vary with weather conditions and wind directions, the precise number of properties likely to be affected was not quantified. The qualitative risk-based assessment suggested that most of the site may experience 'slight-adverse' effects from dust. Nevertheless, the report concluded that dust emissions from the current operation at the brickworks on the proposed development would not be significant.
30. It should be noted that the observational data only assessed the effect of the brickworks; it did not include days when the quarry was active. Neither did it assess the worst-case scenario which could occur during long periods of dry weather. The analysis did not consider any effects of PM_{2.5} which are relevant given that clay comprises very fine particulate matter. Ibstock were therefore concerned about the potential for complaints about dust from future occupants of any properties built in the north-western part of the site.
31. I consider these criticisms of an assessment based on observations over a short time period are understandable. As operators of the Ashdown Brickworks, Ibstock are dealing on a daily basis with the dusty nature of the processes associated with quarrying and brickmaking. It therefore follows that by introducing new homes within 25m of their site they may be faced with an increased number of complaints about dust.
32. I acknowledge that dust settling on cars, outdoor furniture and restricting the opportunities for residents to hang out washing are likely to be sources of annoyance for future occupants. In long dry periods this may occur more frequently, and dust deposits are likely to increase. However, there was no evidence to suggest that there would be significant dust problems throughout the year. Neither was there any suggestion that the proposal would increase the risk of adverse effects on the health of residents on the appeal site. In any event Ibstock's operations are subject to planning conditions and an environmental permit which require the implementation of dust mitigation measures. It is therefore appropriate for me to assume that the operation complies with these requirements, as outlined by paragraph 188 of the Framework.

33. I am therefore satisfied that future occupants would not be exposed to unacceptable dust pollution arising from the current operation of the brickworks, which would be unduly harmful to their living conditions.

b) Odour and light

34. The primary source of odour from the brickworks is associated with the operation of the kilns. An odour assessment was undertaken by the appellant, was agreed by the Council's EHO and its conclusions were not contested by Ibstock. The Environmental Permit requires that 'there shall be no offensive odour beyond the process boundary'. It is appropriate for me to assume that this requirement is being met. In any event, and notwithstanding concerns raised by local people, I am satisfied that the technical work carried out was thorough and based on its results, the scheme is acceptable in this regard.
35. As the brickworks can operate throughout the night the issue of lighting was raised by Ibstock and local residents. Lights from the brickworks could shine towards the rear elevations of the dwellings on the western side of the site. This could potentially cause some nuisance in the hours of darkness. However, occupants would have the means of mitigating this through the use of blinds and/or blackout curtains. I therefore do not consider light spillage onto the appeal site would be a reason for the scheme to fail.

c) Overall findings

36. Taking all the above factors into consideration, I conclude that the currently permitted operations at the Ashdown Brickworks and Quarry would not result in unacceptable living conditions for future occupants of the proposed development arising from excessive noise, dust, or other sources of pollution. This conclusion is predicated on the implementation of mitigation measures in the form of a 5m acoustic fence along the western boundary of the site and the provision of an appropriate standard of glazing to reduce internal noise within properties on the western side of the development.
37. Subject to these mitigation measures the proposal would comply with Policy OSS4(i) and (iv) of the Rother Local Plan Core Strategy which requires development to meet the needs of future residents and be compatible with existing and planned use of adjacent land. It would accord with Policy DEN7(i) of the Rother District Development and Sites Allocation Local Plan (DASA) which requires development to demonstrate that there would be no significant adverse impacts arising from noise, taking account of the location and established land uses. Neither would the proposal conflict with Policy SP8 of the MSP, emerging Policy RM3 of the review of the MSP, or paragraph 193 of the Framework which seek to prevent non-minerals development near an MSA that would result in incompatible development.

Future of the Ashdown Brickworks MSA

38. The MSA includes a valuable reserve of clay beneath the existing buildings on the site. To exploit this resource, it would be necessary to remove the existing brickworks buildings and find alternative areas in which to provide a manufacturing facility and to store and load bricks for distribution. The works associated with any demolition and the subsequent operation to extract clay from this part of the MSA would bring noisy activities considerably closer to the proposed dwellings.

39. The Ardent report assessed the effect of demolishing the existing buildings and extracting the clay on noise levels on the appeal site. Figure 10 within the report gives the results for daytime noise assuming that the acoustic fence is in place. The Council's EHO raised concerns about the effects of this scenario by stating that there would be significant and very noticeable increases in the garden sound levels, above those which are predicted to arise with the current operations. The implication of this would be that additional mitigation would be required. Nevertheless, as this scenario is only a future possibility the EHO did not object to the current proposal.
40. However, Members were concerned that future occupants of a limited number of plots (Nos 2 and 4-8) would experience noise levels between 55-60dB(A) which would result in unacceptable harm. The Council therefore contends that it is for the appellant to 'future proof' the development in accordance with paragraph 193 of the Framework in order to protect the existing business and prevent the sterilisation of valuable mineral resource within the MSA.
41. At the Hearing Ibstock stated that there are no plans in the short or medium term to demolish the brickwork buildings or extract the clay. However, the existing buildings date from the 1970s and the operations reflect the practices of that period. When the buildings and associated kilns reach the end of their useful life, it would be an option to replace them elsewhere within the MSA. This would be considered alongside the possibility of extracting clay under the area that the buildings currently occupy.
42. However, replacing the buildings and extracting the mineral resource would require a new planning permission. The effects of the demolition and clay extraction on the surrounding area would have to be assessed at that time. The fence associated with the appeal proposal would provide partial mitigation against the additional noise. Any further mitigation which was found to be required to make the extraction acceptable, as seems likely, would be the responsibility of Ibstock (or any successor operator).
43. The MWPA's response to the proposal did not address the long-term option of clay extraction from beneath the brickwork's building and operational area. Neither did it suggest that the proximity of homes so close to the clay reserve would prevent its extraction in the longer term. Even though the Council's EHO raised concerns about the effects of additional noise on future residents and Policy SP8 of the MSP seeks to strongly resist non-minerals development that could sterilise or prejudice future extraction, neither the EHO nor the MWPA objected to the proposal on that basis. Therefore, whilst the Council's concerns may be understandable, there is no compelling evidence before me to suggest that the scheme would unreasonably restrict the future growth of the business. Although the provision of additional mitigation measures could make it more difficult and costly to undertake clay extraction, no evidence was presented which suggested that it would be either impossible or unviable.
44. For these reasons, I conclude that the current proposal would not sterilise or prejudice the extraction of the mineral resource. It would therefore comply with Policy SP8 of the MSP, Policy RM3 of the emerging MSP and Policy OSS4 (iv) of the Local Plan. I am also satisfied the scheme would accord with paragraph 183 of the Framework insofar that the existing business would not have unreasonable restrictions placed on it in the future as a result of development permitted after it was established.

Other Considerations

Location and accessibility

45. The appeal site lies outside but immediately adjoins the settlement boundary of Bexhill. It is in the countryside for the purposes of planning policy and the proposal does not meet any of the exceptions set out in Policy RA3 of the Local Plan which justify a countryside location. The settlement hierarchy in Policy OSS1 of the Local Plan seeks to focus new development on Bexhill (within its defined boundary). However, the acceptability of any particular site will be determined having regard to a range of factors, including the site's accessibility to services set out in Policies OSS2 and OSS3.
46. The highway authority initially objected to the proposal due the lack of services and facilities within walking distance of the site. As bus stops offering a frequent service are more than 1km away there was significant concern about the inadequacy of alternative travel options for those who would not have access to a car. Local people also raised concerns about the effects of additional traffic in the area as many future occupants would be likely to rely on a car as their primary means of transport.
47. Extensive negotiations took place between the appellant and the highway authority to agree ways in which the accessibility of the site could be improved. This led to the agreement of a package of measures which could improve its accessibility and reduce reliance on car travel. These included improvements to pedestrian access to the site, new sections of footway and crossing points on Turkey Road, a bus stop within the site, a financial contribution towards bus services and a travel plan to promote a range of measures to encourage sustainable transport choices.
48. Even with these measures, the highway authority concluded that the site's location would be far from ideal from an accessibility perspective. However, it accepted that future residents would not be entirely reliant on a car. The lack of facilities within a 10–15 minute walk would be offset by improvements to bus provision and there would be opportunities for some residents to cycle to facilities located further afield.
49. Based on securing the improvements to local infrastructure, travel plan measures and contributions to the bus service, through the imposition of conditions and a S106 agreement, the highway authority withdrew its objection to the proposal. I am therefore satisfied that it would accord with Policies OSS3 and TR3 of the Local Plan.

Drainage and flood risk

50. The Flood Risk Assessment (FRA) considered all potential sources of flooding and concluded that the site is at low risk of flooding. However, residents raised concerns about surface water discharge leading to the flooding of properties and roads in the surrounding area. The Local Lead Flood Authority acknowledged that there is an existing surface water overland flow from the appeal site towards properties fronting Turkey Road. It therefore advocated the inclusion of measures to divert these flows away from existing properties and located in areas where they can be maintained in perpetuity. These requirements can be secured by condition and would prevent any increased rate of discharge to downstream watercourses.

Other matters

51. I have considered other matters raised by main and interested parties which included effects on trees, wildlife, the surrounding landscape, including the setting of the cemetery, and the additional pressure on local services. However, many can be addressed by the imposition of suitable conditions, and I consider none of them to be determinative in this case.

Planning Obligation

52. The planning obligation will secure 27 of the 89 dwellings as affordable homes, being a mix of First Homes, shared ownership and affordable rent. A further total of 4 plots will be provided as serviced plots for Self-build and Custom housebuilders. The obligation includes mechanisms to ensure that these various homes will comply with the appropriate legislative restrictions on their occupancy and be retained as intended in perpetuity.
53. The obligation will also secure the provision of open space, the responsibility for the future maintenance of which will pass to a Management Company. This company will also take on the responsibility for maintaining the acoustic fence along the western boundary of the site. In addition, the agreement secures financial contributions to the provision of a bus service, the implementation of variations to traffic regulation orders and a travel plan audit fee. The obligation commits the owner to enter into a S278 agreement to deliver the necessary highway works to serve the development both on and off the site.
54. I am satisfied that the obligation's provisions are reasonable and necessary and meets the tests of the set out in the Community Infrastructure Levy Regulations. I have therefore taken it into account in reaching my decision.

Planning Balance

55. The Council is unable to demonstrate a five-year supply of deliverable housing sites (5YHLS). As of April 2022, it was only 2.79 years although it has now marginally improved to 3.09 years. However, in the most recently published Housing Delivery Test the Council's performance stood at 41%. There is therefore an ongoing and acute need to find suitable sites to provide additional homes. In these circumstances the test of paragraph 11 d) ii) of the Framework applies.
56. The provision of 89 houses including a significant number of affordable homes together with the provision of plots for Self-build and Custom housebuilders, secured through the planning obligation, are benefits which carries substantial weight in the scheme's favour. The proposal therefore accords with the government's aim to significantly boost the supply of housing.
57. There would also be short term economic benefits during the construction period with the creation of jobs on site and through the supply chain. In the longer-term future occupants would contribute to the local economy through their spending power. Together these attract moderate weight. There would also be contributions to the provision of local services and facilities through the Community Infrastructure Levy and New Homes bonus. However, as these would help to provide services future occupants would require, this is a benefit of limited weight.

58. On the other hand, there would be conflict with the development plan arising from the site's countryside location and the erosion of the rural urban fringe of Bexhill. The proposal would also fail to comply with the development plan due to lack of private amenity space for 14 dwellings, and minor shortfalls in the provision of Self-build and Custom Housing plots and accessible and adaptable dwellings. The proposal would therefore conflict with the development plan as a whole.
59. However, as the Council's spatial strategy seeks to focus development on Bexhill, the site's location on the edge of the town, surrounded by suburban and urban development cannot be said to be fundamentally at odds with its overall approach. The chronic shortage of housing sites suggests that it will be impossible to remedy housing supply without breaching those boundaries. In this context, conflict with the spatial strategy can carry only limited weight against the scheme.
60. The proposal would result in the loss of an undeveloped field and due to the rising topography within the site, some of the houses would be visible from Turkey Road. The proposal would therefore erode the rural fringe of Bexhill which includes the cemetery. However, as the site is not part of a valued landscape, as defined by the Framework, and given its proximity to existing residential development, any harm would be localised and limited.
61. Introducing homes where there are limited transport choices is likely to mean that many of the future residents will be largely dependent on cars to travel to the services and facilities that they need. In this case, and after extensive negotiations, the highway authority reluctantly accepted it would be possible to provide sufficient genuine choice of travel mode and withdrew their initial objection to the scheme. Whilst the location is far from ideal, I agree with this conclusion taking full account of the package of measures that can be secured through conditions and the S106 obligation. This is therefore a neutral factor in the planning balance as the proposal would accord with the Framework's objective to pursue opportunities to promote walking and public transport use when deciding where to locate development.
62. The proximity of the site to Ashdown brickworks means that the area already experiences a degree of disturbance from noise, dust and light pollution. Due to the positive relationship that Ibstock has maintained with local residents this has not led to significant complaints which have involved the Council. Nevertheless, there are understandable concerns that an influx of a significant number of new residents living closer to the operation is likely to generate more complaints which could not be addressed easily. Future occupants would be exposed to some noise disturbance, particularly on the site's western side. There would be nuisance caused by dust, with the north-western side of the site being most adversely affected. However, I am satisfied that with the mitigation measures now secured, and implemented prior to occupation, these adverse impacts would not cause significant harm to the living conditions of future occupants. Consequently, the operation of the existing business would not be unduly affected by any unacceptable effects on future residents. The proposal would therefore accord with paragraph 193 of the Framework. Nevertheless, the proximity of the site may lead to a somewhat uncomfortable relationship between the operator and future residents. This factor weighs against the scheme to a limited extent.

63. It was also necessary to consider the effect of the proposal on the future possibility of extracting clay from underneath the area currently occupied by the brickwork buildings. However, there was no objection from the MWPA that the proposal would sterilise this resource and no firm indications from Ibstock about any future intention to extract it. I therefore found that the appeal proposal would not prejudice the exploitation of this mineral resource. There was therefore no conflict with the approach set out in paragraph 216 of the Framework. Any additional harmful effects that might arise from a future proposal would need to be addressed through a fresh planning application. These are therefore neutral factors in the planning balance.
64. This leads me to conclude that the collective but limited adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits of providing new homes when assessed against the policies in the Framework as a whole. The presumption in favour of sustainable development applies and the appeal succeeds.

Conditions

65. A list of conditions prepared by the main parties was included in the SoCG and formed the basis of a discussion at the Hearing. The need for some of the conditions to be discharged before development can begin was addressed. A finalised list incorporating various amendments was subsequently submitted which the appellant has agreed with the Council. I have considered these conditions having regard to paragraph 56 of the Framework. Pre-commencement conditions can only be imposed where there is a clear justification and with wording agreed by the appellant. I am satisfied that these requirements have been met.
66. In addition to the standard time limit, a condition specifying the plans is necessary and the detailed description and date has been included with each in the interests of clarity and certainty at the appellant's request. Condition 3 requires compliance with matters relating to ecology and trees which have already been agreed with the Council and is therefore justified to prevent harm to protected species and local habitats.
- a) Pre-commencement conditions*
67. Pre-commencement conditions requiring agreement to a Construction Environmental Management Plan, a Construction Management Plan and a Construction Biodiversity Management Plan [conditions 4,5 and 6] are justified to protect the natural environment, biodiversity, highway safety and the living conditions of occupants of neighbouring dwellings. Similarly, agreement to a works methods statement and mitigation strategy is necessary to protect specific protected species and ensure appropriate disposal of invasive species [condition 7].
68. Plans for habitat creation and enhancement for the site [condition 8] and to undertake investigative archaeological works [condition 9] must be agreed prior to the commencement of development to prevent loss of valuable habitat and to ensure that any archaeological and historical interest in the site is safeguarded and recorded.
69. It is essential that details of the means of providing foul and surface water drainage [conditions 10 and 11] are agreed before work on site begins in the

interests of preventing pollution, avoiding flood risk, and thereby protecting the Pevensey Levels SAC/RAMSAR/SSSI, and the properties and amenity of nearby residents.

70. In view of the essential nature of the noise mitigation measures necessary to protect the living conditions of future occupants and make the development as a whole acceptable in planning terms, it is necessary to agree full details of the acoustic barrier along the site's western boundary [condition 13] and the noise mitigation measures to be included in the design details of the properties on Plots 1-14 and 87-89, [condition 12] before works begin.
71. Detailed drawings including levels, sections and construction details of roads, surface water drainage, outfall disposal and street lighting need to be agreed before works begin and are justified in the interests of highway safety [condition 14].
- b) Other conditions*
72. A condition to secure remediation of any unexpected contamination encountered during the construction period is justified in the interests of protecting human health and the natural environment [condition 15].
73. Before building above slab level takes place and in the interests of the appearance of the development, it is necessary to agree external materials for the dwellings, site levels and finished floor levels, hard-surfacing materials, proposed boundary treatments and all minor structures in the public realm, [conditions 16 and 17].
74. A condition restricting working hours during the construction period is justified to protect the living conditions of residents in the surrounding area [condition 19].
75. Prior to occupation of the site a Landscape and Ecological Management Plan (LEMP) is required to deliver biodiversity net gains and to ensure that these are effectively managed in the long-term to maintain their conservation value [condition 18].
76. Prior to occupation of the dwellings, it is necessary to a) provide a Local Area of Play (LAP) which shall be retained for its designated purpose [condition 20] and b) complete all soft landscaping which will protect trees and plants for an extended period of 10 years [condition 22].
77. To ensure the continued satisfactory operation of the A259 which is part of the strategic road network, it is necessary to restrict the number of homes which can be occupied prior to a junction improvement at King Offa Way being implemented [condition 21]. To minimise the effect of the proposal on air quality and protect human health, measures to mitigate high-level emissions are required [condition 23].
78. In the interests of highway safety it is necessary to ensure that a) the creation of the proposed vehicle access on Turkey Road is the first act of development; b) the site is not occupied until the access has been completed in full accordance with the details previously agreed; c) the access is not used until the required visibility splays have been provided and d) the internal roads serving the development have been designed and constructed to approved standards [conditions 24, 25 and 26]. To ensure that the development

functions well and does not prejudice highway safety no dwelling should be occupied until the associated parking areas have been provided. Each space should be constructed to the appropriate standard having regard to the presence of walls and fences [conditions 27 and 28].

79. To promote the use of cycling and sustainable travel choices, the development should not be occupied until a) secure, weatherproof cycle parking and b) the covered bus shelter have been provided [conditions 29 and 30]. Neither shall occupation of the dwellings begin until a Travel Plan has been agreed and a Travel Plan Co-ordinator appointed to work with incoming residents of the development [condition 31].
80. To mitigate and adapt to climate change, it is necessary to secure provision of solar panels [condition 32]. To provide adaptable homes, dwellings should be constructed in accordance with the Building Regulations Accessibility Standards and to reduce water consumption dwellings should not be occupied until they can demonstrate compliance with the standard of no more than 110 litres/person/day water efficiency [conditions 33 and 34].

Conclusion

81. The appeal scheme would conflict with the development plan. However, there are material considerations, most particularly the significant shortfall in 5YHLS, which indicate that the appeal should be determined other than in accordance with the development plan.
82. I therefore conclude that the appeal should be allowed.

S M Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Hashi Mohamed Counsel instructed by Bellway Homes (South London)

Mark Bewsey Director, DHA Planning
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FOR THE LOCAL PLANNING AUTHORITY:

Chris Peters Principal Planning Officer

INTERESTED PARTIES:

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Kiran Saijan East Sussex County Council (Planning)

Cllr Richard Thomas Ward member

Cllr Colin Winter Chair Bexhill Town Council Planning Committee

Lynn Tear Representative of local residents' group

Bridget Allen Local resident

Michael Plowman Local resident

DOCUMENTS

1. Statement by Lynne Tear on behalf of local residents
2. Statement by Michael Plowman
3. Costs decision associated with appeal APP/U1430/W/20/3270665

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved documents and drawings:
 - Schedule of accommodation, dated 13.03.2023
 - Plot by Plot schedule, dated 13.04.2023
 - Variant Schedule, dated 13.04.2023
 - Drawing No. 062111-BEL-SL-02 (Supporting Planning Layout), Revision B, dated 21.09.2023
 - Drawing No. 062111-BEL-SL-03 (Storey Heights Layout), Revision B, dated 21.09.2023
 - Drawing No. 062111-BEL-SL-04 (Tenure Layout), Revision B, dated 21.09.2023
 - Drawing No. 062111-BEL-SL-05 (Unit Type Layout), Revision B, dated 21.09.2023
 - Drawing No. 062111-BEL-SL-06 (Location Plan), Revision A, dated 11.04.2023
 - Drawing No. 062111-BEL-SL-SS02 (Street Scene 02), Revision A, dated 13.04.2023
 - Drawing No. 062111-BEL-SL-SS03 (Street Scene 03), dated 03.02.2023
 - Drawing No. 062111-BEL-SL-SS04 (Street Scene 04), dated 03.02.2023
 - Drawing No. AR-4B-2S-CB-E1 (THE ARKWRIGHT (H) – ELEVATIONS – BRICK), Revision A, dated 06.02.2023
 - Drawing No. AR-4B-2S-CT-E1 (THE ARKWRIGHT (H) – ELEVATIONS – TILE), dated 20.01.2023
 - Drawing No. AR-4B-2S-P1 (THE ARKWRIGHT – FLOOR PLANS), dated 01.11.2019
 - Drawing No. BA-2B-2S-CB-E1 (THE BAKER (H) – ELEVATIONS – BRICK), Revision A, dated 06.02.2023
 - Drawing No. BA-2B-2S-P1 (THE BAKER – FLOOR PLANS), dated 19.11.2018
 - Drawing No. BM-3B-2S-CW-E2 (THE BLEMMERE (H) – ELEVATIONS – WEATHERBOARD), dated 18.01.2023
 - Drawing No. BM-3B-2S-P1 (THE BLEMMERE – FLOOR PLANS), Revision C, dated 18.11.2021
 - Drawing No. CN-2B-2S-CB-E1 (THE COINER (H) – ELEVATIONS – BRICK, Revision A, dated 19.01.2023
 - Drawing No. CN-2B-2S-CT-E2 (THE COINER (H) – ELEVATIONS – TILE), dated 19.01.2023
 - Drawing No. CN-2B-2S-P1 (THE COINER – FLOOR PLANS), Revision A, dated 01.11.2019
 - Drawing No. CT-4B-2S-CB-E2 (THE CARTOGRAPHER (H) – ELEVATIONS – BRICK), dated 25.03.2023
 - Drawing No. CT-4B-2S-P1 (THE CARTOGRAPHER – FLOOR PLANS), dated 22.11.2018
 - Drawing No. FC-3B-25S-CB-E1 (THE FALCONER – ELEVATIONS – BRICK), dated 03.02.2023
 - Drawing No. FC-3B-25S-CT-E1 (THE FALCONER – ELEVATIONS – TILE), dated 02.02.2023
 - Drawing No. FC-3B-25S-P1 (THE FALCONER – FLOOR PLANS), dated 07.02.2023
 - Drawing No. FM-3B-2S-CT-E1 (THE FRAMER (H) – ELEVATIONS – TILE), Revision A, dated 19.01.2023
 - Drawing No. FM-3B-2S-P1 (THE FRAMER – FLOOR PLANS), dated 01.11.2019

- Drawing No. HA-3B-2S-CB-E2 (THE HARPER (H) – ELEVATIONS -BRICK), dated 14.02.2019
- Drawing No. HA-3B-2S-CT-E2 (THE HARPER (H) – ELEVATIONS – TILE), dated 19.01.2023
- Drawing No. HA-3B-2S-P1 (THE HARPER – FLOOR PLANS), Revision A, dated 01.11.2019
- Drawing No. HI-3B-2S-CB-E1 (THE HILLARD (H) – ELEVATIONS – BRICK), Revision A, dated 19.01.2023
- Drawing No. HI-3B-2S-CB-E2 (THE HILLARD (H) – ELEVATIONS – BRICK), dated 25.03.2022
- Drawing No. HI-3B-2S-CT-E1 (THE HILLARD (H) – ELEVATIONS – TILE), dated 19.01.2023
- Drawing No. PG-4B-2S-CW-E1 (THE PARGETER (H) – ELEVATIONS – WEATHERBOARD), Revision A, dated 10.01.2023
- Drawing No. PG-4B-2S-CW-E2 (THE PARGETER (H) – ELEVATIONS – WEATHERBOARD), Revision A, dated 20.01.23
- Drawing No. PG-4B-2S-P1 (THE PARGETER – FLOOR PLANS), Revision A, dated 19.10.22
- Drawing No. PG-4B-2S-P2 (THE PARGETER – FLOOR PLANS), Revision A, dated 09.02.23
- Drawing No. RE-4B-2S-CB-E1 (THE REEDMAKER (H) – ELEVATIONS – BRICK), Revision A, dated 19.01.23
- Drawing No. RE-4B-2S-CB-E2 (THE REEDMAKER (H) – ELEVATIONS – BRICK), dated 25.03.2022
- Drawing No. RE-4B-2S-CT-E1 (THE REEDMAKER (H) – ELEVATIONS – TILE), dated 20.01.2023
- Drawing No. RE-4B-2S-P1 (THE REEDMAKER – FLOOR PLANS), Revision A, dated 01.11.19
- Drawing No. SAIL-2B-2SC-CT-E1 (THE SADDLER II (H) – ELEVATIONS – TILE), dated 20.01.2023
- Drawing No. SAIL-2B-2SC-CT-E2 (THE SADDLER II (H) – ELEVATIONS – TILE), dated 20.01.2023
- Drawing No. SAIL-2B-2SC-P1 (THE SADDLER II – FLOOR PLANS), dated 06.06.2018
- Drawing No. SAIL-2B-2SC-P3 (THE SADDLER II – FLOOR PLANS), dated 13.04.2023
- Drawing No. TI-3B-2S-CB-E1 (THE TILLMAN (H) – ELEVATIONS – BRICK), Revision A, dated 06.02.23
- Drawing No. TI-3B-2S-CB-E3 (THE TILLMAN (H) – ELEVATIONS – BRICK), Revision A, dated 18.04.23
- Drawing No. TI-3B-2S-P1 (THE TILLMAN – FLOOR PLANS), dated 19.11.2018
- Drawing No. TI-3B-2S-P2 (THE TILLMAN – FLOOR PLANS), dated 18.04.2023
- Drawing No. HAA-3S-CT01-E1 (HARWOOD COURT – ELEVATIONS – TILE), dated 31.01.2023
- Drawing No. HAA-CT01-P1 (HARWOOD COURT – FLOOR PLANS), dated 31.01.2023
- Drawing No. HAA-CT01-P2 (HARWOOD COURT – FLOOR PLANS), dated 31.01.2023
- Drawing No. HAA-CT01-P3 (HARWOOD COURT – FLOOR PLANS), dated 31.01.2023
- Drawing No. NOA-3S-CT01-E1 (NORTHCOTE COURT – ELEVATIONS – TILE), dated 31.01.2023
- Drawing No. NOA-CT01-P1 (NORTHCOTE COURT – FLOOR PLANS), dated 31.01.2023

- Drawing No. NOA-CT01-P2 (NORTHCOTE COURT – FLOOR PLANS), dated 31.01.2023
 - Drawing No. NOA-CT01-P3 (NORTHCOTE COURT – FLOOR PLANS), dated 31.01.2023
 - Drawing No. 062111-SH02 (Cycle Shed 02 Plan & Elevations), dated 03.02.2023
 - Drawing No. 062111-SH03 (Cycle Shed 03 Plan & Elevations), dated 03.02.2023
 - Drawing No. GAR01-R2-CB (GARAGE 01 PLAN & ELEVATIONS), dated 04.04.2019
 - Drawing No. GAR02-R3-CB (GARAGE 02 PLAN & ELEVATIONS), dated 04.04.2019
 - Drawing No. 2107150-003 (POTENTIAL SITE ACCESS), Revision D, dated 09.12.22
 - Drawing No. 2107150-SK02 (SINGLE DECKER BUS SWEEP PATH ANALYSIS), Revision B, dated 11.07.23
 - Drawing No. P18063-004 (POTENTIAL A259/ A269 SIGNALISED JUNCTION MITIGATION), dated 13 JUN 2019
 - Drawing No. 7741.PP.2.0 (Planting Plan Overview), Revision C, dated 26.06.2023
 - Drawing No. 7741.PP.2.1 (Planting Plan 1 of 4), Revision C, dated 26.06.2023
 - Drawing No. 7741.PP.2.2 (Planting Plan 2 of 4), Revision C, dated 26.06.2023
 - Drawing No. 7741.PP.2.3 (Planting Plan 3 of 4), Revision C, dated 26.06.2023
 - Drawing No. 7741.PP.2.4 (Planting Plan 4 of 4), Revision C, dated 26.06.2023
 - Drawing No. 7741.HSP.3.0 (Hard Surface Plan Overview), Revision B, dated 04.04.2023
 - Drawing No. 7741.HSP.3.1 (Hard Surface Plan Sheet 1 of 4), Revision B, dated 04.04.2023
 - Drawing No. 7741.HSP.3.2 (Hard Surface Plan Sheet 2 of 4), Revision B, dated 04.04.2023
 - Drawing No. 7741.HSP.3.3 (Hard Surface Plan Sheet 3 of 4), Revision B, dated 04.04.2023
 - Drawing No. 7741.HSP.3.4 (Hard Surface Plan Sheet 4 of 4), Revision B, dated 04.04.2023
3. The development hereby permitted shall be carried out in accordance with all ecological measures and/or works detailed within the following documents and as amended by Technical Note 02 (Additional Ecological Information), produced by Aspect Ecology, dated 25/07/23, and Initial Consideration of Consultation response received from East Sussex County Council Ecology Officer (Ref: 6381 TN01 ESCC dv2), produced by Aspect Ecology, dated June 2023:
- a) Tree Survey and Impact Assessment (1762-KC-XX-YTREE-TreeSurvey-and-ImpactAssessment-Rev0), produced by Keen Consultants, dated August 2022.
 - b) Drawing No. 1762-KC-XX-YTREE-TPP01RevC (TREE PROTECTION PLAN), dated 10.08.22.
 - c) Ecological Appraisal (File Reference: 6381 EcoApp vf2 JL/AP), produced by Aspect Ecology, dated January 2023.
 - d) Confidential Appendix: Badger Survey Results and Assessment (File Reference: 6381 Confidential Appendix JL/AP), produced by Aspect Ecology, dated July 2022.
 - e) Update Habitat Survey and Biodiversity Net Gain Assessment ((File Reference: 6381 BNG TN dv2/JL/AH), produced by Aspect Ecology, dated May 2023.

These have all been submitted with the planning application and agreed in principle with the Local Planning Authority prior to determination. Amongst other things, this includes the requirement for a great crested newt licence, badger sett closure licence, further bat surveys where trees T1-T4 are to be removed for health and safety reasons and 200mm gap behind green wall trellis (climbing) systems.

Pre-commencement conditions

4. No development hereby permitted shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following details:

- a) Include, but not be limited to, the measures set out in paragraph 6.2.2 of the Information to inform a Habitats Regulations Assessment (including an Appropriate Assessment) – File Reference: 1006381-AA HRA.vf AP/AH – produced by Aspect Ecology, dated August 2022.
- b) Detailed measures to manage flood risk, both on and off the site, during the construction phase.
- c) Complaints and public consultation procedure.

Thereafter the construction of the development shall be carried out strictly in accordance with the approved CEMP.

5. No development hereby permitted shall take place (including demolition, ground works and vegetation clearance) until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CMP shall be implemented and adhered to in full throughout the entire construction period. The CMP shall provide details as appropriate but not be restricted to the following matters:

- a) Details (text, maps, and drawings as appropriate) of the scale, timing and mitigation of all construction related aspects of the development
- b) Site hours of operation.
- c) Numbers, frequency, routing and type of vehicles visiting the site (including measures to limit delivery journeys on the SRN during highway peak hours such as the use vehicle booking systems etc).
- d) Measures to ensure that HGV loads are adequately secured.
- e) Travel plan and guided access/egress and parking arrangements for site workers, visitors and deliveries.
- f) Sheeting of loose loads and wheel washing and other facilities to prevent dust, dirt, detritus etc. from entering the public highway (and means to remove if it occurs).
- g) The anticipated number, frequency and types of vehicles used during construction.
- h) The method of access and egress and routing of vehicles during construction.
- i) The parking of vehicles by site operatives and visitors.
- j) The loading and unloading of plant, materials and waste.
- k) The storage of plant and materials used in construction of the development.
- l) The erection and maintenance of security hoarding.

- m) The provision and utilisation of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders).
 - n) Details of public engagement both prior to and during construction works.
 - o) Noise and dust control measures.
6. No development hereby permitted shall take place (including demolition, ground works and vegetation clearance) until a Construction Biodiversity Management Plan (CBMP) has been submitted to and approved in writing by the Local Planning Authority. The CBMP shall include the following details:
- a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements), including those to Smiths and High Woods Local Wildlife Site, Lowland Deciduous Woodland HPI and adjacent waterbodies in the Brickworks, with the latter requiring the additional use of temporary bunding and silt fencing.
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to deliver Tool Box Talks and oversee works.
 - f) Responsible persons and lines of communication.
 - g) The role and responsibilities on site of an ecological clerk of works (ECow) or similarly competent person.
 - h) Use of protective fences, exclusion barriers and warning signs.

Thereafter the construction of the development shall be carried out strictly in accordance with the approved CBMP.

7. No development hereby permitted shall take place (including demolition, ground works and vegetation clearance) until a works method statement and mitigation strategy for the protection of a) invasive plant species (Japanese knotweed), b) great crested newt, c) dormouse, d) badger including monitoring, and e) reptiles has been submitted to and approved in writing by the Local Planning Authority. The content of the method statement shall include the following details:
- a) Purpose and objectives for the proposed works.
 - b) Detailed design(s) and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used).
 - c) Extent and location of proposed works shown on appropriate scale maps and plans.
 - d) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction.
 - e) Persons responsible for implementing the works.
 - f) Initial aftercare and long-term maintenance (where relevant).
 - g) Disposal of any wastes arising from the works.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

8. No development hereby permitted shall take place until an Ecological Design Strategy (EDS) addressing – habitat creation and enhancement for the site to provide biodiversity net gain, including profile/margin design for all attenuation basins to accommodate amphibian access, sensitive lighting strategy for bats and badgers (which for bats should be in accordance with best practice guidance note GN08/23), artificial badger sett creation, habitat/log piles, hedgehog nest sites and hedgehog hole locations and specification for bat and bird bricks/boxes including 5 No. swift, 5 No. swallow, 5 No. house martin, min. 89 No. bricks (ideally integrated into buildings) for other/generalist bird species and min. 89 No. bee bricks integrated into buildings – has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include the following:

- a) Purpose and conservation objectives for the proposed works.
- b) Review of site potential and constraints.
- c) Detailed design(s) and/or working method(s) to achieve stated objectives.
- d) Extent and location /area of proposed works on appropriate scale maps and plans.
- e) Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f) Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g) Persons responsible for implementing the works.
- h) Details of initial aftercare and long-term maintenance.
- i) Details for monitoring and remedial measures.
- j) Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

9. No development hereby permitted shall take place (including demolition, ground works and vegetation clearance) until the Applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

10. No development hereby permitted shall commence until a scheme for the provision of foul water drainage works has been submitted to and approved in writing by the Local Planning Authority, and the foul water drainage works to serve the development shall be carried out in accordance with the approved details. Occupation of the dwellings should align with the delivery of any sewerage network reinforcement required to ensure that adequate wastewater network capacity is available to adequately drain the development.

11. No development hereby permitted shall commence until details of a surface water drainage system have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage system shall incorporate the following:

- a) Detailed drawings and hydraulic calculations. The hydraulic calculations shall take into account the connectivity of the different surface water drainage features. The calculations shall demonstrate that surface water flows can be

limited to 36.5 l/s for all rainfall events, including those with a 1 in 100 (plus climate change) annual probability of occurrence.

- b) Details of a drainage structure (swale or land drain) intercepting overland flows to direct them away from existing properties fronting Turkey Road. The drainage structure should have an outfall to ensure the surface water can be conveyed downstream without increasing flood risk.
- c) The details of the outfall of the proposed drainage system and how it connects into the sewer shall be submitted as part of a detailed design including cross sections and invert levels.
- d) The detailed design shall include information on how surface water flows exceeding the capacity of the surface water drainage features will be managed safely.
- e) The detailed design shall be informed by findings of groundwater monitoring between autumn and spring. The design should leave at least 1m unsaturated zone between the base of the drainage structures and the highest recorded groundwater level. In the event this cannot be achieved, details of measures which will be taken to manage the impacts of high groundwater on the hydraulic capacity and structural integrity of the drainage system shall be provided.
- f) A maintenance and management plan for the entire surface water drainage system, which ensures the designed system takes into account design standards of those responsible for maintenance. The maintenance and management plan shall cover the following:
 - Clearly state who will be responsible for managing all aspects of the surface water drainage system, including piped drains.
 - Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The development shall not be occupied until evidence (including photographs) demonstrating that the surface water drainage system has been constructed in accordance with the approved details, has been submitted to and approved in writing by the Local Planning Authority. The approved maintenance and management plan for the entire surface water drainage system shall remain in place for the lifetime of the development.

12.No development hereby permitted shall commence until full details of the noise mitigation measures to be incorporated in the design of the individual properties at the western edge of the site (Plots 1-14, and 87-89), to achieve internal noise levels of 27 dB LAeq, 2300-0700hrs in bedrooms and 32 dB LAeq, 0700-2300hrs in living/dining rooms have been submitted to and approved in writing by the Local Planning Authority, and the development shall thereafter be carried out in accordance with the approved details.

13.No development hereby permitted shall commence until full details of the proposed acoustic barrier along the western boundary of the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include the following:

- a) Scaled elevations and sections of the acoustic barrier detailing construction materials and showing the relationship with the new dwellings and adjacent brickworks and quarry.
- b) The required sound insulation category specified by BS EN 1793-2 shall be determined by the addition of 15dB(A) to the maximum insertion loss

assumed for the barrier in the predictions for the Noise and Vibration Assessment (Report Ref: 2107150-11B), produced by Ardent Consulting Engineers, dated April 2023.

- c) The acoustic barrier shall be designed to have an acoustic durability of 0.25 dB/year maximum loss and a non-acoustic durability of 20 years to ensure that adequate mitigation is maintained over the longer term.
- d) A maintenance and management plan for the acoustic barrier, which shall cover the following:
 - Clearly state who will be responsible for maintaining the acoustic barrier.
 - Evidence of how these responsibility arrangements will remain in place throughout the lifetime of the development.

The development shall not be occupied until the acoustic barrier has been constructed in accordance with the approved details. The approved maintenance and management plan for the acoustic barrier shall remain in place for the lifetime of the development.

- 14.No development hereby permitted shall commence until detailed drawings, including levels, sections and constructional details of the proposed roads, surface water drainage, outfall disposal and street lighting to be provided, have been submitted to and approved in writing by the Local Planning Authority.

Other conditions

- 15.If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy and timetable detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 16.No development above slab level shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the approved details:
- a) Specifications and samples of the materials to be used in the construction of the external surfaces of all buildings.
 - b) The proposed site levels and finished floor levels of all buildings in relation to existing site levels, and to adjacent highways and properties (including levels of paths, drives, steps and ramps).
- 17.No development above slab level shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the approved details:
- a) Specifications and samples of all hard surface materials shown on the approved Hard Surface Plans.
 - b) The means of enclosure of individual plots, including the design and location of fencing.

- c) New boundary treatment for No. 306 Turkey Road, including the design and location of fencing ensuring privacy and security for No. 306.
- d) Details of all minor structures proposed in the public-realm (including street-furniture, refuse or other storage units, signage).

18. A landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development hereby permitted. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions, together with a plan of management compartments.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

19. Construction activities, including piling, associated with the development hereby permitted shall not take place other than between the hours of:

08:00 to 18:00 hours on Mondays to Fridays inclusive,
08:00 to 13:00 hours on Saturdays,

and not at any time on Sundays, Bank and Public Holidays.

Deliveries associated with the development hereby permitted shall not take place other than between the hours of 08:00 to 18:00 hours on Mondays to Fridays inclusive, and not at any time on Saturdays, Sundays, Bank and Public Holidays.

20. The development hereby permitted shall not be occupied until the Local Area of Play (LAP) shown on the approved drawings has been provided in accordance with a detailed specification of works for this area, which has been submitted to and approved in writing by the Local Planning Authority. The LAP shall thereafter be retained for that use and shall not be used for any other purpose.

21. No more than 50 of the dwellings hereby permitted shall be occupied until the scheme of works at the Bexhill Leisure Centre (A269)/King Offa Way (A259) junction shown on approved drawing no. P18063-004 (POTENTIAL A259/ A269 SIGNALISED JUNCTION MITIGATION), has been fully implemented and opened to all traffic.

22. All soft landscaping works shall be undertaken in accordance with the approved Planting Plans prior to first occupation of the dwellings hereby permitted or in accordance with a timetable for implementation which has been submitted to and approved in writing by the Local Planning Authority. Any trees or plants that, within a period of ten years after planting, are removed, die or are seriously damaged shall be replaced by others of the same species, size and number as originally proposed, unless otherwise agreed in writing by the Local Planning Authority.
23. Prior to first occupation of the development hereby permitted, air quality and emissions mitigation measures at least equal in cost to the damage costs calculated in the High-level Emissions Mitigation Assessment (Report Ref – 2107150-R14A), produced by Ardent Consulting Engineers, dated April 2023, shall be implemented in accordance with an air quality and emissions mitigation measures scheme which has been submitted to and approved in writing by the Local Planning Authority.
24. No development other than the creation of the vehicular access shall commence until the vehicular access serving the development has been laid out. The development hereby permitted shall not be occupied until the new vehicular access serving the development has been constructed in accordance with approved Drawing No. 2107150-003 (POTENTIAL SITE ACCESS), Revision D, and as amended as part of the s278 agreement and detailed design.
25. The new vehicular access as shown on ACE Drawing 2107150-003B, shall not be used until visibility splays of 2.4m x 82.3m to the east (measured to the centre line of the carriageway) and 2.4m x 92.3m to the west (to the nearside edge of the carriageway) are provided and maintained thereafter.
26. The new estate roads shall be designed and constructed to a standard approved by the Local Planning Authority.
27. The development hereby permitted shall not be occupied until motor vehicle parking areas have been provided in accordance with the approved drawings or details which have been submitted to and approved in writing by the Local Planning Authority, and the areas shall thereafter be retained for that use and shall not be used other than for the parking of motor vehicles.
28. The motor vehicle parking spaces shall measure at least 2.5m by 5m (add an extra 50cm where spaces abut walls/fences).
29. The development hereby permitted shall not be occupied until secure covered cycle parking areas have been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority, and the areas shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
30. No part of the development hereby permitted shall be occupied until the covered bus shelter and lighting and bus cage and waiting area shown on approved Drawing No. 2107150-SK02 (SINGLE DECKER BUS SWEEP PATH ANALYSIS), Revision B, have been provided in accordance with details which have been submitted to and approved in writing by the Local Planning

Authority. The covered bus shelter and lighting and bus cage and waiting area shall thereafter be retained.

31.No part of the development hereby permitted shall be occupied until a full Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan, once approved, shall thereafter be implemented by a Travel Plan co-ordinator as specified within the approved document. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport and/or as advised by the Highway Authority and shall include the following measures:

- a) The provision of one month's free bus travel for new residents followed by three months discounted travel.
- b) Taster provision of shopping deliveries x 5 from a selected retailer to reduce the need for trips to supermarkets and enable deliveries for those who do not have access to a car.
- c) Encourage cycling by co-ordinating Dr Bike or similar maintenance schemes and promoting a Cycle Buddy Scheme.
- d) Encourage walking, cycling and scootering further through the provision of hi-vis clothing for children. Also, through the possible introduction of walking school bus groups.

32.The dwellings hereby permitted shall not be occupied until solar PV panels have been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority. The solar PV panels shall thereafter be retained.

33.The dwellings hereby permitted shall not be occupied until they have been constructed in accordance with the relevant Building Regulations Accessibility Standard (Part M4(1), Part M4(2), Part M4(3)), as detailed on the approved Plot by Plot Schedule.

34.The dwellings hereby permitted shall meet the requirement of no more than 110 litres/person/day water efficiency set out in Part G of Schedule 1 of the Building Regulations 2010 (as amended) for water usage. The dwellings hereby permitted shall not be occupied until evidence has been submitted to and approved in writing by the Local Planning Authority to demonstrate that they have been constructed to achieve water consumption of no more than 110 litres per person per day.

END OF SCHEDULE OF CONDITIONS



Costs Decision

Hearing held on 13 and 14 August 2024

Site visit made on 14 August 2024

by **S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Costs application in relation to Appeal Ref: APP/U1430/W/24/3339879 Land off Turkey Road, Turkey Road, Bexhill-on-Sea

- 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 Bellway Homes Ltd (South London) for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for development of 89 residential dwellings (including affordable housing), ancillary structures, new access road from Turkey Road, internal roads, car parking, landscaping and public open space, drainage features, and other associated and necessary works.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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.
3. The application was made on substantive grounds and in short was an allegation that the Members failed to follow the advice of their officers, ignored a raft of technical supporting evidence, and provided no alternative evidence or effective spokesperson to justify their decision. The consequence was that the appellant incurred considerable additional expense and the delivery of much needed housing has been delayed.
4. The Council defended its stance on the basis that Members' do not have to go along with officers' recommendations. The Council's environmental health officer (EHO) and the Minerals and Waste Planning Authority (MWPA) both raised concerns about the lack of detailed information pertaining to the acoustic fence which was proposed as mitigation. They also considered there could be harm from dust and light pollution. Members believed they had insufficient information to permit a development which could jeopardise the well-being of future residents. They were also concerned that the proposal could restrict the future growth of an important local business. Members were not satisfied that their concerns could be addressed by the imposition of conditions, so refused planning permission contrary to the advice of their officers.
5. A decision to permit a housing development on the appeal site was always going to be a matter of planning judgement. Firstly, it lies in the countryside beyond the settlement boundary of Bexhill and is not allocated for housing in the Local Plan. Secondly, it is immediately adjacent to the Ashdown Brickworks

and Quarry, a Minerals Safeguarding Area (MSA). The existing operations of quarrying, manufacturing and distributing bricks already causes some noise, dust and other adverse effects on residents living in the surrounding area.

6. However, the Council can only demonstrate a five-year supply of housing land of between 2.93-3.09 years. Officers were therefore acutely aware of the need to identify sites for new homes and that in assessing the scheme it would be necessary to strike an appropriate balance between the competing interests of the brickworks and future residents. The appellant, as the agent of change, knew that they would have to address other issues including accessibility, flood risk, effects on landscape and ecology, as well as the potential impact on the living conditions of future occupants of locating homes close to the brickworks.
7. The fact that the scheme was amended during the Council's consideration of the proposal is testament to the efforts the appellant and officers gave to addressing the many issues raised. Initial objections from statutory consultees including National Highways, East Sussex County Council as local highway authority and Local Lead Flood Authority, were ultimately overcome. Improvements to the layout and increased provision of open space were also secured.
8. The judgement as to whether any adverse effects, in respect of noise, dust and light pollution from the existing operation at Ashdown Brickworks on future residents would be unacceptable, was informed by the view of the Council's EHO. He had agreed the assumptions and standards on which the appellant based the noise assessment. The results of the assessment were predicated on the delivery of a 5m tall acoustic fence to mitigate noise for which no details were supplied. It was nothing more than a line on the plan. It was therefore understandable that Members wanted more details, even if the officers were satisfied that the matter could be addressed by conditions. The initial dust and odour assessments, the scope and methodology for which had also been agreed with the Council's EHO, satisfied the Council's officers that there would be no unacceptable harm for future residents arising from these pollutants. However, Members were not convinced.
9. The Minerals and Waste Planning Authority (MWPA) also had an important role as a statutory consultee. Its primary responsibility, for which there is strong policy support, is to protect the MSA from non-mineral development. It stated that it was for the appellant to demonstrate that the proposal would 'not give rise to complaints about the active brickworks site'. The MWPA did not comment on the methodology of the initial assessments, restricting its concerns to the paucity of information about the acoustic barrier and the lack of a visual assessment of the proposal. I found this response surprising given its approach at the pre-application stage which suggested objection due to the incompatibility of a housing development with the adjacent brickworks. However, rather than formally objecting and requiring additional information to address these matters it effectively 'sat on the fence'. In my view, this placed the Council's officers in a difficult position.
10. In neither of its formal responses did the MWPA address the possible effects of introducing homes so close to the MSA on the ability to exploit the clay reserves under the existing brickworks buildings in the longer term. The Council's EHO raised additional concerns about this future scenario due to the increased noise disturbance that occupants of the western side of the site would experience if these activities took place. However, as this would require

a future planning application, and the MWPA had not raised potential sterilisation of the resource as a reason to object to the current proposal, the Council's officers had little choice other than to concede that the scheme was acceptable. However, I consider the MWPA's formal responses to the application fell well short of what should be expected of a statutory consultee with responsibility for protecting limited mineral resources throughout its plan area.

11. In view of all the above, it is not surprising that Members took a different view, as they are entitled to do, notwithstanding the professional advice of their officers. They represent local people who live close to the brickworks and understand the problems of noise, dust and light pollution that nearby residents have to contend with. Whilst that might not be technical evidence that is equivalent to the assessments presented by Ardent, the lived experiences of neighbours should not be swept aside as of no relevance.
12. There were also very real concerns raised by Ibstock who were far from convinced that the proposed acoustic fence would provide adequate mitigation. They were genuinely concerned about the prospect of having to deal with a significant number of additional complaints about their operations due to the proximity of the proposed dwellings to their site. They had asked for consideration to be given to a bund to provide greater separation and protection. However, there was no evidence to suggest that such a proposition had ever been considered by the appellant or the Council's officers. I therefore do not consider that Members' behaviour was either irrational or unreasonable in refusing the scheme. The fact that the vote was split demonstrates that it was not a decision that they took lightly.
13. However, once the Council had refused the scheme and the appeal had been lodged, Members should have realised that it would be necessary to defend their decision by providing detailed and cogent planning, evidence-based reasons for their decision. This simply did not happen. The lack of substantive evidence in its appeal statement, and the absence of any suitably qualified person to justify the decision of Members, either by their own EHO or a consultant acting on their behalf, significantly restricted the manner in which the Council was able to present its case at the Hearing.
14. This was unreasonable and left the appellant's evidence to be challenged by local people and Ibstock through the appeal process. However, as well as the qualitative concerns articulated by residents, Ibstock appointed AECOM to pursue their objection to the proposal. They contended that different assumptions and standards should have been applied to the assessment. This was a serious criticism which suggested that the impact of noise and dust had been under-estimated, and light inadequately considered. These were matters which I sought to test through the Hearing.
15. Although ultimately, I found in the appellant's favour, that was by no means a foregone conclusion. The appeal process was not a waste of time or expense, it provided an open forum where those matters could be discussed by experts who had different perspectives. In respect of noise, the condition securing the acoustic barrier was strengthened and its future maintenance ensured by that condition and through the planning obligation. Enhanced glazing for properties on the western side of the appeal site was also secured by condition. These were significant improvements over and above what had been previously agreed with officers. In respect of dust, I was satisfied that existing controls on

the activities of the MSA would provide adequate protection for future residents. I found concerns about light pollution were not a determinative factor in the assessment of the scheme's acceptability.

16. When the scheme was refused, the appellant could have chosen to undertake further negotiations with the Council and could have offered some, or all of the above improvements. Instead, they exercised their right of appeal. Although the Council provided a short appeal statement, it behaved unreasonably in not more fully substantiating its reason for refusing the scheme at the Hearing. Nevertheless, through the appeal process other interested parties were provided with an opportunity to put forward their concerns in ways that would not have occurred if the officers' recommendation had been accepted. Whilst the appellant has incurred the additional costs of presenting the case at appeal, this has not been wasted. On the contrary, planning permission for an improved scheme offering better protection for future residents has now been granted.
17. I have been asked to consider another appeal in Rother District where Members refused an application for housing contrary to officers' recommendations. In that case costs against the Council were awarded. However, that scheme related to a site that was allocated for housing whereas this was not. That site's suitability in respects other than the reason for the refusal, had already been tested through examination into the Development and Site Allocations Local Plan, whereas this had not. Neither was that site anywhere near a Minerals Safeguarding Area. That application for an award of costs is therefore not directly comparable with the current proposal.
18. For all the above reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

S M Holden

INSPECTOR