



Appeal Decisions

Inquiry held on 30 and 31 July, 7 August, 3, 4 and 7 October 2024

Site visits made on 30 and 31 July 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Appeal A Ref: APP/L3815/W/24/3341520

Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- 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 Barratt David Wilson Homes against the decision of Chichester District Council.
- The application Ref is EWB/22/02214/FULEIA dated 24 August 2022, was refused by notice dated 27 September 2023.
- The development proposed is the erection of residential dwellings (including affordable housing), associated highway and landscape works, open space and flexible retail and community floorspace (Use Classes E and F).

Appeal B Ref: APP/L3815/W/24/3341439

Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
- The appeal is made by Barratt David Wilson Homes against the decision of Chichester District Council.
- The application Ref is 22/02235/OUTEIA dated 16 August 2022, was refused by notice dated 27 September 2023.
- The development proposed is the construction of sheltered living accommodation.

Appeal A Decision

1. The appeal is dismissed.

Appeal B Decision

2. The appeal is dismissed.

Applications for costs

3. An application for costs was made by the Council against Barratt David Wilson Homes. This application is the subject of a separate decision.

Preliminary Matters

4. A Casework Management Conference (CMC) had taken place on 4 June 2024, with another inspector who at that time was assigned to the case. When that inspector became unavailable to hold the inquiry, I was appointed. Whilst I read the notes prepared prior to and following the CMC, this is my decision and the Inspector who held the CMC has had no further input.

5. At the CMC, it was clarified that the address of the sites should be as I have set out above.
6. The public inquiry opened on 30 July. On the second day, an application was made for an adjournment by the appellants which I agreed to due to the need to ensure that flood risk evidence had been peer reviewed and that the Environment Agency could be consulted.
7. I sought clarification about the descriptions of development and with respect to Appeal A. For reasons which will be set out below, the number of dwellings being proposed has been reduced from 280 to 268.
8. During the hiatus between the on-line round table sessions relating to prospective planning conditions and planning obligations on 7 August, the Council reviewed its case and further matters were agreed between the main parties. My decision is based upon the outstanding areas of dispute between the main parties.

Main Issues

9. Parts of the site in Appeal A adjoin the settlement boundary of East Wittering, a 'settlement hub' as defined within LP Policy 2. However, there is no dispute that residential development in these locations is not supported by Chichester Local Plan: Key Policies, 2014-2029 (LP) adopted in 2015 particularly policies 2 and 4. The Council's emerging Local Plan (ELP) at the time of writing this decision had reached examination stage but there are no policies relied upon which would support the proposals. The appellant's case relies upon the application of paragraph 11d of the National Planning Policy Framework (the Framework) with respect to the most important development plan policies within the LP being out of date and I return to this below.
10. When opening the inquiry, I set out the main issues in dispute as I saw them, based upon what had been discussed previously at the CMC. However, leading up to and during the inquiry, the areas of dispute narrowed further. There are matters which, whilst the Council has reduced its objections to the proposals in terms of the overall planning balance, they remain main issues.
11. The remaining main issues in both appeals are therefore:
 - the risks of flooding of the site due to coastal flooding on the basis of the Strategic Flood Risk Assessment (SFRA) modelling for future flood risk and whether a Sequential Test is required;
 - the effect of the proposals upon the highway network with respect to the level of financial contribution towards A27 mitigation;
 - The effect of the proposals on the supply of the best and most versatile agricultural land;

Reasons

Flood risk

12. The 2 appeal sites cover just over 16ha of land which is currently in agricultural use for arable farming. There are 2 parcels of land separated by a hedgerow. The southern parcel adjoins the existing built-up part of East Wittering including Barn Road, Meadows Road and Wessex Avenue. The northern parcel

is bounded by Church Road and an industrial estate to the north-west and north-east respectively. There is a gradual slope from west to east across the site towards Hale Farm Ditch which defines the eastern boundary.

13. LP Policy 42 relates to flood risk and water management. This seeks to avoid inappropriate development in areas at current or future risk and to direct development away from areas of highest risk from flooding. It also positively states that development in areas at risk of flooding as identified by the Environment Agency flood risk maps will be granted subject to all of 7 criteria being met. The criteria that relate to the matters in dispute are: whether the proposal meets the sequential and exception test (where required) in relation to the National Planning Policy Framework (the Framework); and whether a site-specific flood risk assessment demonstrates that the development will be safe, including the access and egress, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. An assessment of these 2 most relevant criteria within LP Policy 42 inherently therefore requires consideration of the current Framework.
14. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Furthermore, where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere. All plans should apply a sequential, risk-based approach to the location of development, taking into account "all sources of flood risk and the current and future impacts of climate change."
15. The aim of the sequential test is therefore to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
16. The Planning Practice Guidance (PPG) says that a sequential test will not be required where the site is in an area at low risk from all sources of flooding, unless the Strategic Flood Risk Assessment, or other information, indicates there may be a risk of flooding in the future. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may then have to be applied. Where considering future flood risks it is necessary, as set out in the PPG, to assume that residential development has a lifetime of at least 100 years unless there is justification for considering a different period. Both proposals include residential development and so a 100 year lifetime is reasonable to assume.
17. These proposals were initially submitted with consideration of the Flood Zones maps based upon the Environment Agency modelling from 2016. Those maps were updated and the results of the remodelling were used in the Strategic Flood Risk Assessment (SFRA) in 2018, including extreme sea levels with climate change uplifts. Reasonable worst case wave overtopping calculations were made using assumptions about combinations of conditions as well as the model being calibrated through comparisons with real observed events. Further flood zone maps were produced and those results show some limited

flood-risk which would affect the land immediately surrounding Hale Farm Ditch along the eastern boundary of the site in Appeal A. The proposals in Appeal A were then revised following the submission of this appeal, reducing the number of proposed homes to 268 as well as relocating other proposed features including drainage infrastructure, outside of what was then considered to be within Flood zones 2 and 3 on the Environment Agency updated maps. It is agreed between the main parties that the proposed housing, employment, community and drainage infrastructure proposed in both cases, would be located in Environment Agency Flood Zone 1. According to that information, there would be a low probability of flooding of those areas.

18. The first reason for refusal of the proposals in both Appeal A and Appeal B, had referred to the sites being at high risk of future tidal flooding, taking account of climate change allowances, based upon the level 1 Interim SFRA, dated December 2022, which was the forerunner of the revised SFRA dated 2023. The update of the SFRA was commissioned by the Council in 2021 and was according to the Council, based on the latest available data and climate change guidance. According to the 2023 SFRA, taking account of projected climate change flood risk, for the year 2121 (within the 100 year lifetime of the development) the majority of both appeal sites would be at medium or high probability of flooding for both the 70th percentile (higher end) and the 95th percentile (upper end)¹.
19. In either of those predicted scenarios, the sequential approach would need to be followed and it would need to be demonstrated that the developments proposed could not alternatively be located in areas with a lower risk of flooding. The appellants do not argue that the site is sequentially preferable and if the SFRA evidence is reasonably realistic, the proposals would not comply with LP Policy 42. The results of the updated SFRA are not however agreed. In particular the modelling adopted with respect to wave overtopping taking account of climate change, the combinations of weather and tidal events as well as how the waves will act at this part of the coast given the composition and form of the beach, are all matters upon which there is substantial conflicting evidence.
20. The application of the SFRA and other evidence have concentrated on areas between beach profiles 73, 74 and 75 as surveyed by the Channel Coastal Observatory (CCO). That therefore covers the beach from around the public car-park accessed from Bracklesham Lane to the east up to Shore Road to the west. It is agreed that profiles 74 and 75 are the most relevant to the site-specific analysis. These are subdivided into detailed profiles as shown in Figure 4-9 of Mr Hird's proof (Y08) as well as in Mr Pekbeken's expanded '1:1' profile graphs (ID43).
21. It is reasonable in my view to consider overtopping as a potential source of water that can cause flooding and which is therefore within the meaning of paragraph 168 of the Framework. There is some evidence such as the photographs provided by Cllr Chilton showing where shingle has washed onto Shingle Walk (ID40) in August 2024 which is around profile '5a00137'. There is also a photograph from February 2022 showing seawater around the café known as 'Billies' and the public toilets within the car park which is close to profile '5a00119'. This is some evidence that seawater has overtopped the

¹ Figures 6-3 and 6-4 of Mr Hartwell's proof of evidence (Y12)

- beaches around these points within recent times. This has not however apparently affected the flood risks further inland, but it is necessary to try to reach a reasonable view of what will happen in the future over the prospective lifetime of the development.
22. The appellant provided alternative modelling to that carried out for the Council's 2023 SFRA, which was carried out by HR Wallingford (the HRW study). That was used to rebut the Council's evidence and was appended to Mr Pekbeken's rebuttal proof of evidence (Y17). The HRW study was then peer reviewed (by Royal Haskoning DHV – 'the peer review' ID33) during an adjournment of the inquiry. I also sought the advice of the Environment Agency (ID35) about the HRW study and Mr Pekbeken's rebuttal proof.
23. A large number of experts have therefore been involved in the preparation of information that is in front of me and 2 very experienced witnesses gave evidence to the inquiry. What clearly comes across from all of this is the lack of certainty and consensus about the actions of the sea in combination with the other elements particularly given the effects of global warming on sea level rises and the nature of storm events. What is also clear is that beach profiles and the nature of the material forming them is critical to the understanding of what happens to any water that does go up and then potentially over the top of the beach. Yet, I heard that there is no consensus regarding how shingle beaches act with respects to wave overtopping or what modelling should be carried out or the effect of storms on beach profiles. There was also no complete agreement from the experts about the presence or otherwise of physical features that are either factually in existence or not such as solid structures including possible sea defences and the effects of those.
24. Some errors were conceded. Mr Hird for the Council explained that within the SFRA, overtopping was modelled with both defended and undefended assumptions in order to present the reasonable worst case. In evidence however he admitted that an error had been spotted with the SFRA inputs. He explained that the undefended inputs were wrong as the inflow line position was incorrect, which only became apparent when preparing for the inquiry.
25. As a result, it has been agreed that the undefended scenarios which have been modelled for the SFRA were unreliable. The Council is therefore relying upon the modelling with the defended scenario which it is agreed is the worst case. With sea defences, water overtopping the beach would generally be trapped by the solid defences, not flowing back to sea via the permeable, loose granular material that the beach largely consists of here. Water overtopping a sea defence would generally enter the landward drainage environment where other modelling then demonstrates how surface water will flow. The situation along these relevant beach profiles is apparently variable due to the presence in some places of harder, impermeable beach defences as well as the construction of buildings and features close to the top of the beach in some places. There are also some outfalls which Dr Cobbold provided photographs of, showing how they can get obstructed by shingle (ID32).
26. Shingle beaches absorb wave energy and are natural defences but also change according to conditions and potentially changing during individual storm events. From the evidence it is clear that these factors along with variations and combinations of storms, tidal conditions and sea levels, make it difficult to model for wave overtopping.

27. The HRW study refers to the lack of data of wave overtopping on shingle beaches and the high degree of uncertainty using some models. As such, they used a different, bespoke approach. The Environment Agency have indicated that the alternative flood modelling, whilst better in some respects, would still be deficient in others and does not meet their modelling standards. A long list of recommendations for future work has also been set out by the peer reviewer including that different modelling is used for future analysis which are designed for irregular beach profiles. The HRW study seems to me to be a work in progress and the timing of its preparation did not leave sufficient time for further iterations after the peer review.
28. In response to the adjournment consultation with the Environment Agency, they also stated that there is a degree of uncertainty with modelling for shingle beaches generally. They also confirm that there are high levels of uncertainty for both the methodology used for the SFRA and the HRW study. Furthermore, the Environment Agency say that even with certain technical points being addressed there will remain a high level of uncertainty given the nature of the site including the complexities of shingle beaches and limitations in the available data. These are significant factors in how much reliance I can give the alternative HRW study and the appellant's rebuttal of the Council's SFRA.
29. As well as the lack of consensus regarding the best ways to model coastal flood events, other complications arise. The matter of crest widths of beach profiles has been identified by all parties as critical to the risks of wave overtopping. Putting it simply, the wider the beach crest, the less chance there will be of waves-overtopping. The reduction in risks of overtopping also diminish rapidly as the assumed width in the modelling increases and is critical to the outcome.
30. Mr Hird refers in his proof of evidence (Y08) to such modelling being subjective and furthermore that it only represents a snapshot in time of a static profile and so a conservative approach is often taken as it is unknown how the beach will change into the future. This is logical given the inherent variability in profiles that beaches made from coarse granular material which is demonstrated by the evidence including the historic cross-sections.
31. It is reasonable to assume that the shingle beach will continue to be maintained given the background documentation provided setting out the business case (ID39) at least in the short term. This would assist in ensuring replenishment of the beach but that does not prevent the profiles changing over time including during individual storm events which will be influenced by multiple variables.
32. The HRW study does however go some way towards confirming some of the risks highlighted by the 2023 SFRA. Mr Pekbeken's rebuttal proof (Y17) at figures 6 to 17 includes maps of various scenarios based upon crest widths of 0m but with various defence crest heights and assuming different annual exceedance probabilities (AEP) with and without assumptions as well for climate change. These show the site being clear of any flooding for 0.5%AEP with crest heights respectively of 6.07m, 5.70m and 5.40m and also clear for 0.1%AEP again with the same crest heights.
33. With a 6.07mAOD crest height a 0.5%AEP event (2121 70% sensitivity analysis) figure 12 shows flooding around the eastern and north-eastern boundary of the site (Hale Farm ditch), through the southern section and adjoining the north-western boundary. Flooding in this scenario affecting

dwelling would be limited and much of it would be below 0.1m in depth although some spots of deeper flooding is shown. Significantly, this would also affect the vehicular site access to the north-west and also the route towards the southern emergency access. The flooding becomes marginally worse modelled with lower crest heights. When 2121 climate sensitivity of 95% is factored in, the flood risks rise substantially for all crest heights with much of both appeal sites being inundated to above 0.1m and in parts up to 1m.

34. I recognise that a 0m crest-width may not occur universally along the whole beach between the most relevant profiles but it seems realistic to consider that it will in parts and at times. The system is inherently complex and it seems realistic based upon both the 2023 SFRA and the HRW study that the appeal sites could flood due to the effects of wave overtopping.
35. The application of the policies that I have set out above mean that I have to be reasonably confident that the appeal sites are not at risk of flooding and if there is some risk, there needs to be a clear justification for why these developments should go ahead. After all, these matters relate to the health and safety of the occupants of dwellings as well as their possessions now and in the future.
36. In relation to the first main issue, it has not been demonstrated that the sites are suitably safe from the risks of coastal flooding. It is necessary for a test of sequentially preferable sites to be undertaken before the developments could be approved. As such, for the reasons set out above the proposal does not comply with LP Policy 42. The proposal does not comply with policies in the Framework to protect areas at risk of flooding and direct development to lower risk areas and so taking account of paragraph 11(d)(i), there is a clear reason for refusing the proposals.

Highway contributions

37. It is agreed between the main parties that the as a direct result of these proposals, there will be increased highway congestion. The generation of additional traffic upon the A27 Chichester Bypass junctions needs to be mitigated for. The dispute between the main parties relates to what financial contributions should be made rather than the fundamental need for improvements. The completed planning obligations include 'blue pencil' clauses, and one alternative or the other would be effective depending upon my conclusions on this main issue about the level of financial contribution.
38. LP Policy 8 requires integrated transport measures to mitigate the impact of planned development on the highways network. This includes a coordinated package of improvements to junctions on the A27 Chichester Bypass to increase road capacity, reduce traffic congestion, improve safety and improve access to Chichester city from surrounding areas. LP Policy 9 then requires that development proposals should, amongst other things, provide or fund new infrastructure, mitigate the impact of the development on existing infrastructure as well as funding or contributing to improvements to increase the effectiveness and efficiency of infrastructure.
39. To assist in achieving those policy aims, the Council's Planning Obligations and Affordable Housing Supplementary Planning Document, was adopted in 2016 (2016 SPD). Funding has been achieved for some of the necessary highway works through the 2016 SPD. The appellant's have agreed to at least pay what

that document requires. However, the Council is of the view that the increase in costs over the time since the adoption of the LP and the 2016 SPD mean that the mitigation of highway impacts from further housing could not be delivered.

40. The Council has recently, in October just before I resumed the inquiry, adopted the A27 Chichester Bypass Mitigation Supplementary Planning Document (2024 SPD). Importantly, this document is explicit in stating that it is seeking to achieve the aims of the adopted LP rather than the ELP which is currently the subject of examination. The ELP is at an advanced stage of preparation and further evidence about the delivery of necessary infrastructure will be considered through that process. The 2024 SPD aims to provide an interim position for the continued provision of what the current LP is seeking to achieve and it will be withdrawn when the LP is eventually superseded. During the adjournment of the inquiry, the main parties wrote a joint letter seeking clarification of a number of matters from National Highways (NH) who did not object to the proposal. One of the comments from NH in their response confirms the background of increased costs and their agreement with the Council's decision to revise their 2016 SPD.
41. As a matter of principle, particularly given the economic conditions that have occurred since the adoption of the LP and the 2016 SPD, it is sensible for the Council to update through that process the financial contributions required to deliver what the LP is seeking to deliver. They have adopted the 2024 SPD following public consultation and also whilst trying, without success, to secure the gap funding from central government. They also abandoned their previous attempt at providing an updated SPD because in part it was acknowledged that it could arguably be criticised for relating to developments being brought forward through the ELP which was at that time in its formative stages. The 2024 SPD adds further detail to the LP Policies, how those aims may be achieved and does not conflict with those policies. It is a material consideration to which I can give substantial weight.
42. The specific alternative proposed financial contributions would however still need to meet the tests for planning obligations in the Framework and the statutory tests within regulation 122(2) of the Community Infrastructure Levy Regulations 2010, those being that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
43. NH do not say that the proposals would have unacceptable impacts upon highway safety nor severe residual cumulative impacts on the A27. Their letter during the adjournment of the inquiry confirmed that their lack of objection is irrespective of contributions towards A27 mitigation as that is a matter for the Council to consider through applying their LP policies. They did add however that it was on the understanding that contributions are in accordance with the "relevant SPD". An earlier letter from NH on 16 May 2024 had also confirmed that the collection of contributions is a matter for the Council and that they would not offer support to the Council to defend the appeal.

44. The NH position is defined by 2 tests when it comes to responding to planning applications which relate to safety impacts and residual cumulative impacts on the strategic road network. The junction re-designs that the Council is seeking contributions towards would be an attempt to overcome road congestion on local roads as well as the strategic road network.
45. The 2013 Jacobs Transport Study which informed the LP (Core Document B29) provides evidence of significant increases in queue lengths at Fishbourne, Stockbridge and Bogner Road roundabouts as well as congestion on the A27 Chichester Bypass. It is already recognised that the network is heavily congested. Additional development will add to such congestion cumulatively which LP Policy 8 is aimed at mitigating.
46. In terms of the difference between the proposals in Appeal A and Appeal B, the type of housing being proposed in Appeal B, would be age restricted and reduced vehicle use has been reflected in the reduced parking requirements. This is reasonable in that context for that development to contribute a lower figure.
47. I recognise that in previous decisions taken before the 2024 SPD had been adopted, those inspectors could not reach the view that I am here. However, I consider that the new guidance should have substantial weight with respect to its use in calculating the necessary highway contributions to provide mitigation for the increased population that would occupy the proposed developments.
48. In relation to this main issue with the higher proposed contributions according to the 2024 SPD, the proposals would have a satisfactory effect upon the highway network with respect to the level of financial contribution towards A27 mitigation. The necessary delivery of transport infrastructure would be provided for which comply with LP Policies 8 and 9. The lower contributions would not suitably mitigate the impact of the proposed developments.

Agricultural land

49. Both appeal sites together cover around 16.9ha of Grade 2 agricultural land which is therefore considered to be of very good quality. LP Policy 48 relates to the natural environment generally. It states that planning permission will be granted where it can be demonstrated that a number of criteria have been met. Amongst other things, it requires that development of poorer quality agricultural land has been fully considered in preference to best and most versatile land. LP Policy 45 relates to development within the countryside and one of its requirements is that proposals should be complementary to and does not prejudice any viable agricultural operations on a farm.
50. The Framework states that decisions should contribute to and enhance the natural local environment. This should include, amongst other things, recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile agricultural land.
51. The appellant's evidence suggests that large scale horticultural development is not suitable due to the resultant increased traffic flows. The same evidence indicates that the appeal sites would be suitable for growing combined arable crops for many years. Whilst the appellants are of the view that the loss of

land as a natural resource would be minimal, it is not shown that poorer quality agricultural land has been fully considered in preference to developing here.

52. In relation to this main issue, the proposal would have an adverse effect on the supply of the best and most versatile agricultural land. For the above reasons, the proposals would not comply with LP Policy 48 or the Framework.

Other Matters

Housing provision

53. The Council's claimed position is that they can demonstrate the likely delivery of 4.01 years' worth of housing which is disputed by the appellants who say that they have a 3.13 year supply. The appeals had been disputed on the basis of the advice within the Framework regarding the government's objective of boosting the supply of homes. In particular, the appellants were relying upon the Frameworks presumption in favour of sustainable development and the application of paragraph 11(d), as they considered that the housing supply was less than the Council's figures and that the policies most important for determining the application are out of date. However, footnote 7 which is referred to in paragraph d(i) makes it clear that areas of risk from flooding or coastal change amongst others, are areas protected within the Framework and the balance required by paragraph 11(d) does not therefore apply.
54. Notwithstanding this, the proposals would provide housing and the supply in the area is marginally at best above the Council's view of what they are required to provide which they consider should be 4 years supply based upon the advice in paragraph 226 of the Framework. Appeal A would involve the provision 268 dwellings as well as of affordable housing. The planning obligation for this proposal would provide housing to meet local needs including 15 shared ownership units, 17 affordable rented unit, 29 social rented units as well as 20 'first homes'. This would therefore provide a valuable contribution to the local housing needs of the area. Appeal B is proposing housing for older people meeting a specific need and a financial contribution towards affordable housing would also be made which would represent funding for the provision of 13 units elsewhere. The Council confirms this meets the requirements of their Planning Obligations and Affordable Housing Supplementary Planning Document (July 2016) and LP Policy 34.
55. The proposals would therefore provide significant benefits to the supply of housing and the supply of affordable housing. These matters are therefore of significant weight.

Landscape

56. The appeal sites overall currently include relatively flat arable fields enclosed by hedgerows with some large trees. To the west the sites are close to the existing built-up areas of the settlement. The site for Appeal A almost encloses the site for Appeal B and to north there is an industrial estate and to the south, the further built-up part of East Wittering as well as some public open space in the form of playing fields. To the east is a further open agricultural field.
57. The proposals would alter the character and appearance of the area changing the existing undeveloped arable fields to a densely built-up area. However, the impact of this would be limited and localised due to the level nature of the land and the effect of the landscaping features which would be supplemented with

further features secured through planning conditions. The Council's concerns regarding the development of the proposal in Appeal B are in circumstances where it would be isolated if the proposals in Appeal A were not implemented. The planning obligation would prevent the implementation of the Appeal B scheme before part of the surrounding development has been constructed. The Council therefore withdrew their concerns and I agree that the restriction in the planning obligation would avoid additional harm.

Biodiversity and habitats

58. The appeal sites are located close to a number of protected areas. They are around 0.6km from the Solent and Dorset Coast Special Protection Area (SPA), 1.9km from the Solent Maritime Special Area of Conservation (SAC), 0.6km from the Bracklesham Bay Site of Special Scientific Interest (SSSI), 1.4km of the Local Wildlife Site (LWS) Redlands and Meadows. Additionally, the site lies 2.5km east of the Chichester and Langstone Harbours SSSI, SPA and Ramsar Site. Furthermore, the northern parcel of the application site for Appeal A has been re-classified by the Solent Wader and Brent Geese Strategy Steering Group as a Secondary Support Area for the overwintering birds of the Chichester and Langstone Harbours SPA and Ramsar site.
59. If I were minded to allow the appeals, the Conservation of Habitats and Species Regulations 2017 (as amended) would require that I should carry out an assessment of the effects upon these features. Given my overall conclusion in this case, as set out below, it is unnecessary for me to carry out an appropriate assessment under these regulations or an assessment of whether the provisions of the submitted planning obligations relating to these matters fulfil the tests within the Framework and the Community Infrastructure Regulations.
60. However, there would also be on-site natural environment benefits that could be secured through planning conditions which would be beneficial and therefore are positive factors within my overall balance below.

Surface water

61. The effects of the development on surface water would be mitigated by the use of Sustainable Drainage Systems. The proposed surface water drainage scheme is agreed as being acceptable and would be provided subject to appropriately worded conditions.

Accessibility to facilities

62. The appeal sites are also close to East Wittering and Bracklesham which together are a settlement hub as defined in the local plan. These contain a good range of facilities including shops, restaurants, community services including playing fields, a community hall and equipped play areas in addition to those proposed. For instance, further flexible retail facilities are proposed within Appeal A which would be close to the heart of the development. There is a footpaths linking the perimeter of appeal sites with the main parts of the settlement and there are some public transport linkages. Paths are being proposed through the appeal sites as well. The gentle gradients in and around the sites are conducive to cycling and walking. Residents would not rely solely on private vehicles to reach nearby facilities or the very attractive sea-front which would be additional recreational asset for prospective residents. The appeal sites have good connectivity and residents would not be reliant upon

private vehicles to reach this good range of facilities. In these respects, I give moderate additional weight in favour of the proposals.

63. The appellants have provided a planning obligation with respect to Appeal A to provide a new skate park on the adjoining existing recreation ground. There are already recreational areas provided within the appeal site including play areas. These additional facilities have been proposed via a process of community engagement but it is not clear from what I heard that it would be necessary to make the development acceptable or whether they fairly and reasonably relate in scale and kind to the development. The Council considers that this would provide an over-provision of recreational land. As this would not clearly pass all of the regulation 122 tests I cannot take this into account.

Economic and social effects

64. The proposal will provide economic benefits in terms of providing construction jobs. There would be opportunities within the additional retail floorspace for new businesses and the additional population would provide existing nearby commercial areas with potential new customers. The existing social facilities nearby could also be boosted by having an increased population. The development would contain a good range of facilities for prospective occupants such as the proposed allotments, formal and informal recreational areas. This therefore attracts limited additional weight.

Overall Balance and Conclusion

65. There would be benefits of both proposals to which I can attribute substantial weight. Many of the harmful elements of the proposals can also be suitably mitigated. Those benefits along with my conclusion on the second main issue, do not however outweigh my conclusions on the first and third main issues and lack of compliance with the development plan as a whole as well as the policies within the Framework to protect areas at risk of flooding and good quality agricultural land.
66. For the reasons given above and having regard to all other matters raised, I therefore consider that the appeals should be dismissed.

Andy Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Tucker KC, Martin Carter
and Freddie Humphreys of
Counsel,

Instructed by Peter Cleveland for the appellants

*The following are those who
were called and some people
who represented the appellant
at round-table discussions.*

Peter Cleveland MRTPI
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Tetrattech Ecology
Highways

S106 and condition session only
Ms Jardine, Solicitor

Partner, Thompson Snell and Passmore LLP

FOR THE COUNCIL:

David Forsdick KC of Counsel

Instructed by the solicitor to the Council

*The following are those who
were called and some people
who represented the Council at
round-table discussions.*

Jane Thatcher BA MSc MRTPI
Mark Bristow MPlan
Mr Hartwell
Mr Hird
Alex Roberts BA(Hons) MRTPI
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S106 and condition session only
Nicola Golding

Solicitor

S106 and condition session only

FOR THE LANDOWNERS

Miss Patel

Irwin Mitchell Solicitors

INTERESTED PERSONS

Dr Cobbold MEng

Resident

Mr Green

Stubcroft farm Campsite

Cllr Carey

Earnley Parish Council

Mr Mackinnon

Member of the Manhood Peninsular group

Dr Suttcliffe

Resident and Manhood Wildlife and Heritage Group

Dr Collinson PhD

Resident

Cllr Debbie Ford

East Wittering Parish Council

Dr Chilton

Resident

Mrs Taylor

Resident

Mr Russell

Resident

Mrs Budd

Resident

Mrs Mackinnon

Resident

Mrs Seurre

Resident

Richborough

There is an on-line library of all appeal documents and the Inquiry Documents are contained at:

[Stubcroft Farm - 22-02235-OUTEIA & 22-02214-FULEIA | Powered by Box](#)

Here is a list of those Inquiry Documents
(numbering is consistent with the on-line library)

- 01 Council opening
- 02 Appellant opening
- 03 Statement of Mr Green, Stubcroft farm Campsite
- 04 Statement of Mr Carey, Chair Earnley Parish Council
- 5 Statement of Mr Mackinnon
- 6 Video related to Mr Mackinnon's statement
- 7 Statement of Dr Collinson
- 8 Photographs from Dr Collinson
- 9 Statement of Dr Sutcliffe
- 10 Council decision notice for
Council decision notice for planning approval for "Land To The
West Of Centurion Way; Land At Bishop Luffa School; Land At
Adjoining Westgate; Land To The North-east Of Old Broyle Road
St Pauls Road Chichester"
- 11
- 12 National Planning Policy Framework consultation draft 2024
- 13 Appeal site visit suggested locations for inspector
- 14 Email correspondence between JBA consulting & Environment
Agency
- 15 Floodline Development between Floodline Developments and the
Environment Agency May to July 2024
- 15A Environment Agency position statement 24 May 24 and emails
- 16 Environment Agency Guidance recorded flood outline
- 17 Environment Agency Guidance "Flood Risk Assessments Climate
Change Allowance"
- 18a Wittering Tide & Overtopping Calculations (V2)
- 18b Overtopping volumes calculated from SFRA model with 0m crest
width at defences 74 & 75
- 19 Environment Agency policy flood zones
- 20 Groynes in coastal engineering
- 21 Statement of Common Ground on Overtopping
- 22 Mark Bristow's corrected Nationally Described Space Standards
comparison:
- 23 Council flood modelling chronology
- 24i Figure 12 HRW modelled flood risk overlay
- 24ii Figure 14 HRW modelled flood risk overlay
- 24iii Figure 15 HRW modelled flood risk overlay
- 24iv Figure 17 HRW modelled flood risk overlay
- 25 Representations from Highways England re:A27 mitigation SPD
- 26 Representations from Highways England re:A27 mitigation SPD
(continued)
- 27 Email exchange on flood modelling & other things May 2024
- 28 A27 SPD response on behalf of Barratt David Wilson by P
Cleveland 11 July 2024
- 29 Cal record sheet JBA Consulting of profiles 74-75
- 30 Hydraulic Assessment Report

- 31 Note to inspector on ownership for s106 discussion
- 32 Dr Cobbold additional representations following adjournment documents
- 33 Royal HaskoningDHV independent review 12 September 2024
- 34
- 35 EA Response to HRW study
- 36 National Highways response 6 September 2024 following Council and Appellant joint letter during adjournment
- 36a Council and Appellant letter 7 August 20224 to National Highways
- 37 West Sussex Highways comment 14 August 2024 on National Highways letter
- 37a Council and Appellant letter 7 August 20224 to National Highways (as ID36a)
- 39 Beach Management Plan 2021-2026 Background paper
- 40 Statement from Dr Chilton
- 41 Further statement from Dr Cobbold following further evidence after adjournment
- 42 A27 Chichester Bypass Mitigation SPD October 2024
- 43 Profile locations and 1:1 cross sections
- 44 Inspector's note regarding draft conditions 6 September 2024
- 45a Appeal A draft s106
- 45b Appeal B draft s106
- 45c Skate park s106
- 46 Final closing for the Council
- 47 Final closing for the appellant
- 48 Statement of Jill Seure
- 49 Statement of Mrs Mackinnon
- 50 Statement of Common Ground regarding general planning issues



Costs Decision

Inquiry held on 30 and 31 July, 7 August, 3, 4 and 7 October 2024

Site visits made on 30 and 31 July 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Costs application in relation to Appeal A Ref: APP/L3815/W/24/3341439
Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- 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 Chichester District Council for a partial award of costs against Barratt David Wilson Homes.
- The appeal was against the refusal of planning permission for the erection of residential dwellings (including affordable housing), associated highway and landscape works, open space and flexible retail and community floorspace (Use Classes E and F).

Costs application in relation to Appeal B Ref: APP/L3815/W/24/3341520
Land at Stubcroft Farm, Stubcroft Lane, East Wittering,
West Sussex PO20 8PU

- 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 Chichester District Council for a partial award of costs against Barratt David Wilson Homes.
- The appeal was against the refusal of planning permission for the construction of sheltered living accommodation.

Decisions

1. The application for an award of costs in both cases is refused.

Preliminary Matter

2. The application for costs was made in writing during the adjournment and before the resumption of the public inquiry on 3 October. The appellants have also responded in writing. I will refer to the applicant for costs as "the Council" and the defendants as "the appellants".

Reasons

3. 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.
4. The PPG also confirms that the aim of the costs regime is, amongst other things, to encourage all involved in the appeal process to behave in a reasonable way and to follow good practice. It is aimed at encouraging local

- planning authorities to properly exercise their development management responsibilities as well as discouraging unnecessary appeals.
5. This partial application concerns the submission of evidence from the appellants with respect to flood risk. Specifically, this was a rebuttal proof of evidence and information appended to it which necessitated an adjournment. A Casework Management Conference (CMC) on 4 June 2024 had set out a timetable for the submission of proofs of evidence by 2 July, 4 weeks prior to the inquiry opening on 30 July as also required within the inquiries procedure rules¹. There is no explicit provision for the submission of supplementary rebuttal proofs within the procedure rules or other appeal guidance. However sometimes they can be helpful.
 6. Mr Pekbeken for the appellants had prepared a rebuttal (Y17) of the Council's flooding evidence by Mr Hird (Y08). The rebuttal included modelling by HR Wallingford (the HRW study) and was received on 16 July, roughly 2 weeks before the inquiry opened. The bespoke modelling developed for that work had not been previously considered by the Council's experts. It had also not been peer reviewed and the Environment Agency had not been given the opportunity of commenting upon it. At the request of the appellant, I adjourned the inquiry in order to allow for both of those consultations to be undertaken. The Council had resisted the adjournment and instead had prepared to carry on as best that they could. However, I considered that this could prevent the evidence being fully tested and therefore agreed to the adjournment.
 7. The crux of this application is therefore the events that led to the submission of the HRW study only 2 weeks prior to the opening of the inquiry. The appellant's justification relates to how the data required in order for it to be undertaken, was not received in a timely manner.
 8. The planning applications were refused on 27 September 2023. There had been engagement by the appellants with the Environment Agency prior to the applications being submitted and during the processing of them. On the date of refusal of the applications, the appellants had confirmed by email that some data had been received but they also requested 'model files'. Several rounds of correspondence were entered into between the appellant's experts, the Environment Agency and the Council. There appears to have been confusion as to who owned the modelling used and the data. When attempts were made to share the information, it did not work as some elements were still missing. Further modelling files were requested and then received in January 2024 but metadata files for wave overtopping and wave toe heights were still missing after what seems to be further confusion about ownership.
 9. On 24 May the Council's Senior Planning Officer Ms Thatcher emailed the appellant's planning consultant Mr Cleveland referring to the rapidly approaching deadlines and the need for the "re-run modelling" relating to flooding. Mr Cleveland in response the same day stated that "our work is well underway and we are already engaging with the EA on this". He pointed out that they were "in the EA hands re timings". The missing files were not received however by the consultants carrying out the flood risk work for the appellants, until 30 May.

¹ The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000

10. At the Casework Management Conference on 4 June, the Inspector appointed at that stage, recorded nothing in their note specifically in relation to the preparation of the alternative modelling. I do note from Appendix C of Mr Pekbekeben's proof of evidence (Y01) that there had been a meeting between him and Mr Hird along with others who are described as "the Floodline team" regarding modelling, the previous day. At that point, the ongoing discussions appear to have been happening and were constructive. This was however by then only 4 weeks before the proofs of evidence were due to be submitted.
11. The appellant's consultant Mr Pekbeken clearly had to work hard to obtain the necessary information. It is disappointing to see how this seems to have been so difficult when important planning decisions are reliant upon such evidence. With the benefit of hindsight, it could have been helpful if these problems were raised at the CMC.
12. When Mr Hird submitted his proof of evidence (Y08) he refers to the expectation of site-specific flood-risk modelling from the appellant which had not yet been received. In a letter to the Planning Inspectorate dated 12 July, the Council raised concerns following what Mr Pekbeken had included in his proof of evidence about the stated intention of submitting a site specific flood risk assessment and/or an assessment of overtopping and tidal flooding from HR Wallingford. This letter was forwarded to the appellant's planning consultant Mr Cleveland responded on 16 July along with submitting Mr Pekbeken's rebuttal proof along with the HRW study.
13. There was therefore a period between 30 May and the deadline for the submission of proofs of evidence on 2 July where communications about the further evidence appears to have broken down. Furthermore, that period of around 5 weeks from when the appellants had all of the relevant modelling information, doesn't seem very long for such a complex piece of work to be undertaken in my view. There was little time by then to realistically obtain a peer review to verify the results prior to the opening of the inquiry.
14. Had all of the modelling information been provided earlier, the HRW study could have been prepared earlier. The appellant refers to the information being expected within 20 days rather than the 100 days that it actually took. If this had been submitted sooner, it could have made a significant difference, enabling a discussion between the main parties prior to the submission of proofs of evidence as well as potentially a peer review also being undertaken much earlier. This may have enabled the inquiry to continue albeit with a re-arranged time-table rather than an adjournment for several weeks.

Conclusion

15. The adjournment was necessary in order to properly test the evidence and in fairness to both main parties. The late submission of the HRW Study had directly resulted in the need for the adjournment but the delays in receiving the necessary background information were at least in part responsible for that.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Andy Harwood

INSPECTOR