



Appeal Decision

Inquiry held on 14 December 2017

Site visits made on 13 December 2017 and during the course of the Inquiry

by Philip J Asquith MA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2018

Appeal Ref: APP/C3810/W/17/3170059

Land to the south of Ford Lane/east of North End Road, Yapton, Arundel, BN18 0DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Keith Langmead Ltd against the decision of Arun District Council.
 - The application Ref. Y/80/16/OUT, dated 17 November 2016, was refused by notice dated 16 February 2017.
 - The development proposed is described as the 'resubmission of outline planning application Y/60/14 for 4.5 hectares of residential development comprising 3.4 hectares of land for up to 100 dwellings (up to 30 (30%) affordable housing) together with 1.1 hectares of land set aside for public open space and strategic landscaping and 2.2 hectares of public open space and green corridors, with vehicular access from Ford Lane and pedestrian/cycle access only from North End Road'.
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Decision

1. The appeal is allowed and planning permission is granted for 4.5 hectares of residential development comprising 3.4 hectares of land for up to 100 dwellings (up to 30 (30%) affordable housing) together with 1.1 hectares of land set aside for public open space and strategic landscaping and 2.2 hectares of public open space and green corridors, with vehicular access from Ford Lane and pedestrian/cycle access only from North End Road at land to the south of Ford Lane/east of North End Road, Yapton, Arundel, BN18 0DS in accordance with the terms of the application Ref. Y/80/16/OUT, dated 17 November 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Inquiry applications for costs were made by Keith Langmead Ltd against Arun District Council and by Arun District Council against Keith Langmead Limited. These applications are the subject of separate Decisions.

Procedural Matters and Background

3. The application was in outline with all matters other than means of access reserved for subsequent approval.

4. The application is identical to that which was previously refused, for multiple reasons, by the Council in 2014¹. That decision was appealed, with the appointed Inspector recommending that planning permission should be granted. However, the Secretary of State in determining the 'recovered' appeal dismissed the appeal principally on the basis of conflict with out-of-date Policy BB1² of the made Yapton Neighbourhood Plan (YNP)³.
5. Since that decision, it is acknowledged by the Council that the housing land supply position within the district has materially worsened. It recognises that sites like the appeal site, identified in the Council's Housing and Employment Land Availability Assessment as deliverable sites in sustainable settlements such as Yapton, are needed to provide urgently-required market and affordable housing.
6. This position is underpinned by a recent appeal decision⁴. In his decision of October 2017 the Secretary of State, agreeing with the Inspector who held an Inquiry, allowed the appeal against the refusal of 108 dwellings on a site off Burndell Road, Yapton, despite conflict with YNP Policy BB1. In that appeal the Secretary of State acknowledged that the proposal would conflict with Policies GEN2 and GEN3 of the Arun District Local Plan (ADLP), which deal with settlement boundaries and countryside protection respectively, as well as YNP Policies BB1 and H1⁵. However, in acknowledging that as Policies GEN2, GEN3 and BB1 are out-of-date, and that as the district's housing land supply was only 1.9 years, he considered these policies carried limited weight.
7. The Secretary of State went on to accept that the Burndell Road proposal would conflict with paragraph 198 of the National Planning Policy Framework (the Framework). This states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. However, like the Inspector, he considered the circumstances were not normal because of the severe housing shortage that existed in light of a substantially revised objectively assessed need. As such, the conflict carried limited weight.
8. Against this background, the Council now has no 'in principle' objection to the current Ford Lane proposal. Despite the failure between the appellant and the Council to agree any Statement of Common Ground, considerable common ground as to the acceptability of the present scheme does exist, as is clear from the evidence and as confirmed at the Inquiry. This includes the acknowledgement that whilst the scheme conflicts with the same development plan policies as referred to in the Burndell Road appeal, the proposal accords with the Framework in principle and that there are material considerations that justify the grant of permission despite this conflict⁶.

¹ Ref. Y/60/14/OUT

² The YNP defines a built-up area boundary, with Policy BB1 stating that development proposals outside the boundary will not be permitted apart from in a narrow range of circumstances. The appeal site falls outside the built-up boundary and the development is not within any of the exceptions listed in the policy.

³ Appeal Ref: APP/C3810/A/14/2228260

⁴ Appeal Ref: APP/C3810/V/16/3158261

⁵ Policy H1 of the YNP deals with the housing requirement for Yapton. It notes that the minimum housing requirement over the period 2014 to 2029 will be established by the emerging Arun Local Plan (LP). It further notes that additional allocations will be made if the emerging LP requires such action or if identified housing sites do not proceed.

⁶ It is also accepted that the emerging LP should be accorded only limited weight given its present stage on the road to adoption.

9. It is further recognised that there is an inability to demonstrate a five-year housing land supply, as required by paragraph 47 of the Framework, and that there is a serious shortfall⁷. As such, policies for the supply of housing in the ADLP and the YNP are agreed to be out-of-date, and the 'tilted balance' in Framework paragraph 14 applies. It is also agreed that other relevant policies of the ADLP are out-of-date. In accordance with the Framework, the presumption should be one of granting planning permission unless the impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.
10. The Secretary of State, in determining the appeal regarding the previous identical application, accepted that: the site was in a sustainable location; subject to mitigation the proposal would not cause any significant harm to the landscape or to biodiversity; the loss of countryside and productive agricultural land counts against the scheme but that the weight given to this and to conflict with policy in the ADLP and the YNP should take into account the fact that such land would be lost to housing both under YNP allocations and elsewhere in any event if the district's housing needs are to be met; there would be no harm to heritage assets, including the setting of the Grade I St Mary's Church; subject to reserved matters, the scheme would preserve the appearance and character of the Yapton Conservation Area; archaeological interests could be safeguarded through the imposition of a suitable condition; through control of reserved matters the development could be well-integrated, legible and permeable by walking and cycling; and, overall, the environmental effects would be neutral.
11. In respect of the present appeal the Council does not take issue with any of these conclusions. Certain representations from interested persons and parties have sought to argue that there would be harmful impacts in respect of some of the above matters that were previously considered. Nonetheless, from what I have read, seen on my visits, and heard at the Inquiry, I do not consider there is any substantive evidence to persuade me to resile from the conclusions of the previous Inspector or the Secretary of State on these matters.

Main Issues

12. At the outset of the Inquiry I identified three main issues to be considered. These were:
 - whether adequate provision would be made towards the infrastructure requirements arising from the proposed development;
 - the impact on the living conditions of future occupiers of the site from potential noise generated within the adjacent Orchard Business Park; and
 - the impact of the proposal on the operation and safety of the road network.
13. The above were identified on the basis of the Council's four reasons for refusal. The Council's second reason for refusal was that there was a failure to demonstrate that the proposal would not have an adverse impact on trees on the site. However, the Council provided no evidence on this matter and it was

⁷ The Council claims a 2.07-year supply, whilst the appellant considers this to be a 1.9-year supply. The difference is immaterial given that whichever figure is accepted the shortfall is very significantly below the required five-year supply.

accepted by its planning witness that adequate protection for the trees⁸, which are now subject to a Tree Preservation Order⁹, could be secured by the imposition of a suitable condition. I have no reason to disagree.

Reasons

Infrastructure provision

14. The appellant indicated that it was intended to provide a further Unilateral Undertaking (UU) under s. 106 of the Town and Country Planning Act 1990 to supplement that which had already been provided with the application and which contained obligations believed to be necessary at that time. This second UU would secure additional financial contributions towards secondary and further education facilities and a fire and rescue contribution, as requested by West Sussex County Council (WSSCC), and which would be compliant with the Community Infrastructure Levy Regulations 2010. Arun District Council confirmed at the Inquiry that contributions towards the infrastructure requirements for which it remained responsible (such as playing fields) were acceptable to it.
15. An executed second UU was submitted and, as a consequence, the Council no longer pursued its reason that the proposal failed to take account of the full requirements for infrastructure that would be generated by the development. Whilst I discuss the various obligations in more detail below, I am satisfied that as a result of this second UU, in combination with that submitted with the application, the development would make appropriate and necessary provision for infrastructure.

Living conditions as a result of noise

16. Part of the appeal site borders the Orchard Business Park. Uses there fall within Use Classes B1 and B8¹⁰, with one building having a D1 use. Potential noise disturbance for the future occupiers of dwellings within the appeal site was not an issue that arose in respect of the 2014 application or its subsequent appeal.
17. The Council indicated that it had received three separate noise complaints as a result of activity on the Business Park since the initial 2014 application had been dealt with. This prompted the Council's relevant Environmental Health Officer to request information from the applicant to consider whether or not a detrimental impact on living conditions of future residents would be likely to arise from activities on the Business Park.
18. Response was made on behalf of the appellant having checked the planning history for the Business Park. This indicated that none of the uses permitted there are ones that are noise generating for the purposes of national Planning Practice Guidance (PPG) or are ones whose operation would result in detriment to a residential area by reason of noise. Conditions also exist restricting hours of operation. Requests were made on behalf of the appellant to have sight of the nature of the three complaints made but redacted copies of these were only tardily provided by the Council. It is clear that these complaints were resolved, with the Council not needing to take significant action.

⁸ Trees situated on the eastern site boundary and a single Common Lime within the body of the site.

⁹ TPO Y/2/17 (Year 2017)

¹⁰ Town and Country Planning (Use Classes) Order 1987 (as amended)

19. At the Inquiry it became common ground between the Council and the appellant that the issue of potential noise could be addressed through the imposition of a condition requiring, if necessary, the proposal's layout and dwelling design to be subject to a scheme of mitigation at the appropriate reserved matters stage. On the above basis I accept that this would provide a suitable means of addressing this issue.

The impact of the proposal on the operation and safety of the road network

20. The Council's relevant refusal reason was on the basis that there had been a failure to demonstrate that the proposal would not have an adverse impact on the road network. This was founded on the absence of an update to the Traffic Assessment (TA) that had been undertaken for the previous application on the site to take account of the period between the TA's preparation in June 2014 and the submission of the application now subject to this appeal.
21. The current proposal is identical to that previously considered at appeal. Both the Inspector and the Secretary of State considered the scheme then in terms of its proposed means of access and highway impact to be acceptable, subject to the imposition of appropriate conditions. The matter that has now exercised both WSCC, as local highway authority, and Highways England (HE), whose responsibility is the strategic road network, and therefore by extension the Council, was the absence of an update to the TA. The concern is that in the absence of such an update to address the scope for changes in circumstances on the road network, both individually and cumulatively, there is an inability to assess whether there would still be no detriment. Whilst WSCC's concerns relate to the wider highway network, HE's concerns principally relate to impact on the A27/Yapton Lane junction, some 3km north of the appeal site and, specifically, impact on eastbound right-turning from the A27.
22. The appellant's position is that it was unnecessary to update the TA since there have been no material changes in circumstance that could not be adequately addressed through the imposition of appropriate conditions. Prior to the Council's determination of the application the appellant had indicated to the Council that it considered the information then being requested by WSCC and HE as consultees was not relevant, necessary and material to the determination given the planning history and other available information.
23. There is no disagreement that the design of the proposed vehicular access onto Ford Lane remains acceptable or that the volume and distribution of traffic generated by the development would be the same as considered before. Appropriate mitigation was previously agreed. The various matters that the witnesses for WSCC and HE consider should have been addressed (and a stance adopted by the Council) are considered in turn below.
24. In relation to the Burndell Road appeal, the Inspector recorded at paragraph 92 that *'the highway authority is satisfied that traffic flows through Yapton have reduced since the opening of the A259 Felpham Relief Road (the eastern section of the Bognor Regis Relief Road (BRRR)). Key junctions such as Oyster Catcher and Comet Corner were reassessed to take account of this. Some traffic flows will increase marginally at the junctions and some flows will reduce marginally. The changes would be so small as to be imperceptible on a day-to-day basis'*.

25. WSCC's witness accepted that it was appropriate for the appellant to rely on the local highway authority's position noted in the Burndell Road case. The Secretary of State's decision allowing this appeal and agreeing with the Inspector was made as recently as 13 October 2017. I am fully aware of the Yapton Parish Council's view, endorsed by other objectors, that it is considered there has been a noticeable increase in traffic in Yapton since the opening of the BRRR. However, I have seen no substantive evidence to support such assertions. In light of this, I consider it is perfectly reasonable for the present appellant to be able to rely on the conclusion of the Inspector and the Secretary of State in respect of the Burndell Road scheme, based on the opinion of the local highway authority, in respect of the impact of the opening of the BRRR.
26. Having regards to general traffic growth, the TA assessed this between 2014 and 2024. As accepted by the WSCC witness, for the present application the TA covers what would be the opening year (2019) and five years from the date of the application (2021). I agree with the appellant that the HE witness's view that traffic growth should have been assessed until 2031 – the end of the emerging LP period – is inappropriate. Furthermore, for HE it was conceded that its view that assessment should have included sites that are proposed to be allocated within the emerging LP was incorrect and contrary to advice within the PPG as to the scope and content of TAs¹¹. Also, both highway witnesses for the Council accepted that the only dwellings actually provided in Yapton since 2014 were built following permissions listed as committed development and assessed in the TA.
27. These witnesses also conceded that it was not appropriate or fair for the TA to have considered the development of up to 108 dwellings at Burndell Road since this only became a commitment on the granting of permission on appeal in October 2017. For WSCC it was also noted that it was only reasonable to take account of commitments pre-November 2016, when the current appeal application was made. It is noteworthy anyway that from its consultation response on the Burndell Road scheme, the local highway authority considered the impact of up to 108 dwellings on the local highway network would be minimal.
28. There has been criticism of the appellant for a failure to assess 115 dwellings granted permission in Yapton since 2014. The appellant carried out analysis of permissions granted to explain why it was correct and appropriate that these were not assessed. The reasons included the fact that the sizes of some of the developments fell below the threshold for assessment in the County's Transport Assessment Methodology, some were assessed by WSCC/HE as having no wider impact on the road network, and there was no certainty of some sites proceeding within three years of November 2016 (the date of submission of the present application at appeal). Having regard to this latter point, this follows extant guidance in the PPG¹². This notes that TAs and Transport Statements may be required to assess the impact of adopted local plan allocations which have the potential to impact on the same sections of the transport network, together with other directly relevant committed development, where there is a reasonable degree of certainty they will proceed within the next three years.

¹¹ PPG paragraphs 42-015-20140306 and 42-014-20140306

¹² PPG ID:42-015-20140306

The appellant's analysis was not challenged by witnesses on behalf of the Council.

29. An analysis of permissions carried out by HE in the context of the appeal, when examined in detail at the Inquiry and cross-referred to the analysis done by the appellant, showed that only permissions for a total of either only four or, at most, 14 dwellings could properly have been included in the TA as commitments. The absence of the addition of the likely trip generation that could result from this quantum does not in my view amount to a substantive undermining of the robustness of the TA.
30. A further element that WSCC considered should have been included in an updated assessment was the implication of the change from single to full barriers on the railway level crossing on North End Road, about half a kilometre to the north of the appeal site. At the Inquiry it was indicated that such a conversion could increase the 'downtime' of the barriers, with implications for the lengths of queuing traffic. However, there are no details of such a scheme or the changes to downtime, Network Rail's position in not raising objections to the current appeal proposal being that such barriers only may be installed in May 2018. On this basis I accept the appellant's argument that it would have been neither fair nor appropriate to be criticised for not assessing the effects of full barriers during the period between the submission of the two applications on the appeal site. The TA is clear that traffic generated by the appeal proposal would not materially add to queues and delays for drivers based on the current downtimes.
31. As far as accident data are concerned, the TA provided information up to August 2014, which shows Yapton is not an area with a high accident record. The appellant's interrogation of a WSCC website indicates that there are no records of accidents in the vicinity of the appeal site's proposed vehicular access onto Ford Lane, or the suggested pedestrian/cycle access onto North End Road, between August 2014 and November 2016. The Burndell Road appeal decision makes no reference to any unacceptable accident record within Yapton.
32. Having regard to the A27/Yapton Lane junction, the safety and capacity of this was addressed in the TA and proposed works were agreed at the previous appeal. These works were to be secured by the imposition of Grampian-style conditions. The TA sets out that the junction improvements are not required as a result of the traffic generated by the appeal scheme but were agreed to be provided in response to a direction from the Highways Agency (as was)¹³, which specified the conditions to be imposed.
33. HE's concern relates to the potential for queuing back on the main carriageway of traffic wishing to make a right turn into Yapton Lane. The Highways Agency had also required the same improvement works to the junction for a permitted scheme for 173 dwellings on land north of Burndell Road, Yapton (a Persimmon development). This development has been completed without the condition having being implemented, a somewhat surprising state of affairs had there been a serious pre-existing safety concern regarding the junction's operation. At the Inquiry there was acceptance by the HE witness that the accident history of the junction was not significant.

¹³ Highways England is the successor organisation to the Highways Agency with regards the strategic highway network.

34. Also, the HE witness accepted that the Arun Transport Study of 2016 shows that, in the context of proposals for almost 2,000 new dwellings in Yapton and Ford within the emerging LP, HE had expressed no safety, capacity or environmental concerns with regards this junction. Nor had it identified the junction as needing any improvement to accommodate this level of growth.
35. This junction could be brought up to a requisite standard through the implementation of a condition. This could be carried out in pursuance of the Persimmon development (as noted above), in relation to a proposal for residential development to the east of Tye Lane, Walberton, for which there is a resolution to grant permission for 175 dwellings subject to a s.278 agreement, or in relation to the appeal proposal. If the works were carried out pursuant to either the Persimmon scheme or the Tye Lane scheme there would be no requirement for the appeal proposal to provide any improvements since the work would have been done. The provision of a Grampian condition, which is discussed further below, would give flexibility to ensure any necessary work met the existing circumstances at the appropriate time.
36. The insistence on an update to the appellant's TA is further undermined by the seemingly inconsistent dealing with other recent housing schemes in Yapton. For example, HE's position in its consultation response in respect of a 56 dwelling proposal at Bonhams Fields raised no objections, indicating that such a quantum would be unlikely to have any noticeable traffic impact on the safe and efficient operation of the A27. This conclusion was reached without any of the assessment of matters that were being called for in respect of the appeal proposal, the Transport Statement provided with that scheme assessing nothing other than its own traffic generation.
37. In conclusion on this issue, in the circumstances discussed above, the absence of an update to the previous TA is not a serious shortcoming when the evidence indicates there have been no substantive changes in circumstances since the determination of the earlier appeal on the site that would undermine the previous assessment and conclusions. The Council has not provided any evidence to state that the appeal proposal would conflict with ADLP Policy GEN 7¹⁴. It has not demonstrated conflict with paragraph 32 of the Framework which states that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. Nor has it shown that highway safety would be unacceptably compromised.

Other matters

38. The Parish Council accepts the need for Yapton to expand but considers this should be on the basis of such expansion being shaped by the community, through the medium of an updated YNP, and not by speculative development proposals. I am aware that it wishes to progress with an update to review the Plan's built-up area boundary in order to accommodate additional housing over and above the current YNP allocations, and I note its frustration that this is not likely to occur before the adoption of the emerging LP.
39. In an effort to gauge opinion as to where the community would find additional housing acceptable, a questionnaire survey, with a response rate of 9%,

¹⁴ Insofar as GEN 7 is relevant to highways matters in its seeking to ensure development is of a high quality and layout, the policy is permissive providing, amongst other matters, that the development allows for the safe movement of pedestrians and vehicles, giving priority to pedestrians.

- indicated that further growth along the northern boundary of the village, including the appeal site, was felt to be undesirable by a considerable majority.
40. Nevertheless, whilst I recognise the desire, and indeed importance, of local communities being able to shape their futures, I consider such views as expressed in the survey can be accorded only little weight, particularly against the background of the very recent decision on the Burndell Road appeal. Here the Inspector stated that to wait for the YNP to be updated following on from the adoption of the emerging LP would result in significant delay in the provision of housing locally when there is an acute and severe under-supply. There is an increased objectively assessed need for housing, with the Council encouraging planning applications on sites, such as the appeal site, that have been identified as suitable for housing in its Housing and Employment Land Availability Assessment.
 41. The Burndell Road Inspector noted that time was passing and there is a critical imperative to get the housing market moving within the district given the local situation and the national housing shortage. She further noted that to delay until after the adoption of the emerging LP and allocations through a review of the YNP would seriously harm deliverability of housing locally, including affordable homes.
 42. The Secretary of State agreed with the Inspector's conclusions and, as already noted above, whilst agreeing that the Burndell Road site would conflict with Policies GEN2 and GEN3 of the ADLP and BB1 of the YNP, confirmed that these were out-of-date; given the shortfall in housing land supply he considered these policies carry limited weight.
 43. There is no evidence to suggest that the prospect and timing of any review of the YNP has changed since the Burndell Road appeal. I acknowledge the frustration felt by the local community, particularly given the work put into producing the YNP. Nonetheless, given the Secretary of State's clear conclusions on the Burndell Road appeal, it is my view that the same conclusions as to the weight to be accorded to the above policies applies in the current case.
 44. Having regards to the benefits of the scheme, I have no reason to come to a differing conclusion to the Inspector and the Secretary of State in considering the first appeal on this site. This was that the provision of up to 100 dwellings, up to 30% of which would be affordable (and for which there is an acknowledged need), would be benefits to which considerable weight should be given.
 45. This should also be seen within the context of a severe housing shortage and where the Secretary of State has recently concluded in the Burndell Road appeal that there the provision of up to 108 dwellings would make a significant contribution to market and affordable housing in the district. A similar quantum of housing on the present appeal site would be an equally significant contribution and would represent a social benefit of addressing the needs of present and future generations of residents.
 46. There would also be certain economic benefits to the local economy in terms of the creation of direct and indirect construction jobs associated with the development, together with household expenditure in the local economy once the dwellings were occupied, to which I accord moderate weight.

Unilateral Undertakings and conditions

47. The UU submitted with the application contains obligations to make contributions to a range of facilities provided both by Arun District Council and WSCC. These include contributions for facilities at Littlehampton Leisure Centre, those towards library provision, primary education (for the expansion of Yapton Primary School), the promotion of a Traffic Regulation Order for a 20mph speed limit in the vicinity of Church Lane and, at the developer's own expense, the installation of fire hydrants. These were contributions and provisions considered acceptable by the previous Inspector and likewise found to be so by the Secretary of State.
48. In addition to the above, the appellant submitted a second UU to be read alongside the first. This includes additional contributions for fire and rescue purposes (the provision of equipment to control access and smoke penetration), and towards the expansion of both secondary and further education facilities of the St Philip Howard Catholic School at Barnham. These contributions have been agreed with WSCC. I am satisfied that all the obligations are necessary to make the development acceptable and would meet the tests set out in Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010.
49. So far as conditions are concerned, it is my view that the majority of those that were considered at the previous appeal, and were deemed reasonable and necessary to make the development acceptable by both the Inspector and the Secretary of State, are equally applicable now. In this regard Condition 1 is needed to ensure reserved matters are considered and approved by the local planning authority, whilst condition 2 is to accord with the requirements of s.92 of the Town and Country Planning Act 1990. Condition 3 is to ensure development is carried out in accordance with the permitted drawings. Condition 4 is imposed for the same reason and to ensure the timely delivery of the proposed public parkland¹⁵ and green corridors.
50. Condition 5 is required to ensure appropriate landscape details are submitted and approved and landscaping is delivered in a timely manner, together with protection of the trees within the site that are subject to a TPO. Condition 6 is needed to ensure the provision of affordable housing and its subsequent retention, whilst conditions 7 and 9 secure the timely delivery of highway improvements for the protection and safety of road users and residents. Condition 8 ensures that enhancements to footpaths and cycle routes are delivered. A Construction Method Statement is secured by Condition 10 to safeguard highway safety and provide protection of living conditions. Condition 11 is imposed to ensure an appropriate drainage strategy is implemented, whilst Condition 12 provides for the agreement of a Travel Plan, to encourage the use of sustainable modes of transport.
51. Having regards to Condition 13, I have noted the suggestions by the Council, HE and the appellants. I have imposed what is a Grampian-style condition that I consider would ensure that the A27/Yapton Lane junction is improved in a manner whereby additional traffic that might be generated as a result of the

¹⁵ Although the application form refers to 2.2 hectares of 'public open space and green corridors', the accompanying Proposed Indicative Layout & Open Space Proposals drawing 201 C refers to 2.2 ha of proposed public parkland and green corridor.

- proposed development would not have any deleterious impact on the junction's safe operation.
52. Condition 14 is necessary to ensure that the archaeological potential of the site is appropriately investigated and a mitigation strategy implemented, if necessary. Condition 15 is imposed to ensure that appropriate foul water sewerage is implemented before dwellings are occupied. To ensure suitable play areas for children resident in the development are provided in an appropriate and timely manner Condition 16 is imposed.
53. Condition 17 is necessary to protect the ecological interest of the site and to enhance biodiversity. Although included within the previous Inspector's report I do not consider it to be necessary for a condition to be imposed specifying the restriction of the development to 100 dwellings. The terms of the application clearly specify that the development is up to 100 dwellings and so this number could not be exceeded, making a condition to this effect superfluous.
54. As already discussed above in relation to protection from noise, any condition deemed to be necessary would be more appropriately imposed at the reserved matters stage regarding layout and design.
55. At the Inquiry the Council suggested a number of additional conditions. That relating to the need for approval of materials and finishes is not necessary since this would be dealt with at the reserved matters stage. I have added to suggested Condition 10 (the need for the agreement of a Construction Method Statement) the requirement for agreement of the working hours of operational and construction vehicles on the site, in order to safeguard residential amenity. Condition 17 obviates the need for the Council's suggested condition regarding ground or vegetation clearance works in the bird nesting season.
56. A condition is suggested to secure a 10% reduction in energy use. Although the Framework has a core planning principle of support for the transition to a low carbon future, the Council was not able to indicate at the Inquiry that its suggested condition had any specific local planning policy backing for the reduction suggested. In this absence, I am not convinced that such a condition would be reasonable or necessary over and above the need for compliance with appropriate Building Regulations.
57. Other suggested conditions relating to street lighting, car and cycle parking are unnecessary as these would be covered by reserved matters applications, the location of a fire hydrant would be covered by Building Regulations, and the prevention of surface water discharge onto the public highway would be controlled under highways legislation.

Overall conclusions and the planning balance

58. Having regard to the main issues identified: the proposal would make adequate provision for necessary infrastructure; the living conditions of future occupiers of the development could be adequately safeguarded against adverse noise impacts from the adjacent Orchard Business Park; and the scheme would not be likely to impact adversely on the operation or safety of the road network.
59. The proposal would not accord with ADLP Policies GEN2 and GEN3 or YNP Policies H1 and BB1. The scheme would therefore not be in accordance with the development plan overall. However, the most relevant Policies GEN2,

GEN3 and BB1 are out-of-date and, given the district's housing land supply is only around two years, I consider these policies carry only limited weight.

60. Where relevant policies are out-of-date, paragraph 14 of the Framework states that planning permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework as a whole, or policies in the Framework indicate development should be restricted.
61. The proposal, which is in a sustainable location, would make a significant contribution to both market and affordable housing within the district where it is acknowledged the housing shortage is severe. I give this considerable weight, whilst the economic benefits of construction jobs and increased expenditure within the local economy attract moderate weight.
62. In accordance with paragraph 198 of the Framework, an application that conflicts with a NP that is in force should not normally be granted. However, circumstances are not normal because of the severe housing shortage. Like the Secretary of State in his determination of the Burndell Road appeal, I consider this conflict carries limited weight. There are no other specific policies within the Framework which indicate that the development should be restricted.
63. Given the controls that would be operative through imposed conditions, and the provisions of the obligations contained within the UUs, any adverse impacts of the proposal do not significantly and demonstrably outweigh the identified benefits. The proposal would represent a sustainable form of development. Overall, there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. As such, I conclude that the appeal should succeed and planning permission be granted.

P J Asquith

INSPECTOR

Schedule of Conditions

- 1) Details of appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the LPA before the expiration of three years from the date of this permission. The development hereby permitted shall begin before the expiration of one year from the date of approval of the last of the reserved matters to be approved.
- 3) This permission relates to the following submitted plans:
 - Location Plan Drg: 200B
 - Proposed Indicative Layout/open space proposals: Drg 201C
 - Illustrative Strategic Landscape/open space proposals: Drg 202B
 - Means of access Drg: 130431-10A

4) The layout details submitted pursuant to Condition 1 shall accord with Proposed Indicative Layout/open space proposals Drg: 201C, and shall include:

- i) 4.5 hectares (ha) of residential development comprising up to 100 dwellings on 3.4 ha at a net site density of 29 dwellings per ha and 1.1 ha of ancillary public open space and strategic landscaping laid out within the area marked A on Drg: 201C and;
- ii) 2.2 ha comprising public parkland and green corridors laid out within the area marked B on Drg: 201C.

No more than 30 dwellings shall be constructed unless or until the proposed 2.2 ha of public parkland and green corridors has been laid out in accordance with the approved details.

5) The landscaping details submitted pursuant to Condition 1 shall include:

- i) a plan showing the existing trees subject to TPO/Y/2/17 to be retained, together with details of measures for their protection during the course of development;
- ii) the species, number, sizes and position of new trees, shrubs and hedging to be planted and details of any grassed or other planted areas, including seeding with an appropriate native British wildflower flora mix;
- iii) measures to enhance biodiversity; and
- iv) a landscape management plan detailing a programme for the implementation, long term management and maintenance of the 1.1 ha of ancillary public open space and the 2.2 ha of public parkland.

No more than 50 dwellings shall be occupied unless and until the landscaping has been implemented in accordance with the approved details and any trees, shrubs or hedging plants which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless otherwise approved in writing by the LPA.

6) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the LPA. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of the total number of dwellings approved at reserved matters stage of which 80% shall be social rented and 20% intermediate housing;
- ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no Registered Social Landlord is involved);

iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and

v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

- 7) No development shall commence until detailed design and construction drawings for the means of access/egress onto Ford Lane as shown on the submitted Drg: 130431-10A (including street lighting) and the proposed improvements to North End Road as shown on the submitted Drg Nos. 130431-04B and 130431-05B within the Transport Assessment of June 2014, including bus stops, pedestrian facilities and street lighting along and across North End Road, have been submitted to and approved in writing by the LPA and no part of the development shall be commenced until these means of access have been constructed in accordance with the approved detailed design and construction drawings.
- 8) No development shall commence until detailed scheme, design and construction drawings for the retention and improvement of public rights of way routes 357, 358 and 359, together with the provision of new cycle and new pedestrian routes through the site and to North End Road, have been submitted to and approved in writing by the LPA. No dwellings shall be occupied until the improvements and new pedestrian and cycle routes have been implemented and constructed in accordance with the approved detailed scheme, design and construction drawings and any legal requirements, as may be necessary.
- 9) No development shall commence until detailed design and construction drawings, including provision of a Stage 1 Road Safety Audit for the proposed improvements to the Lake Lane/Yapton Lane junction as shown on the indicative Drg: 130431-09A within the Transport Assessment of June 2014, have been submitted to and approved in writing by the LPA and no more than 50 dwellings shall be occupied until the junction modifications have been constructed in accordance with the approved detailed design and construction drawings.
- 10) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the LPA. The Statement shall provide for (but not necessarily be limited to):
- i) vehicle parking for site operatives and visitors, and on-site turning space;
 - ii) loading and unloading of plant and materials;
 - iii) storage of construction plant and materials;
 - iv) erection and maintenance of security hoarding, including decorative displays and facilities for public viewing as appropriate;
 - v) wheel washing facilities;

- vi) measures to control the emission of dust and dirt during construction;
- vii) the location of any site huts/cabins/offices;
- viii) routing of construction vehicles to and from the development site;
- ix) details of any temporary traffic management works required to construct any of the works;
- x) details of signage on the approaches to the site warning of the presence of construction vehicles and associated activities on or close to the public highway;
- xi) details of the Construction Design Management Co-ordinator and site foreman, including contact details (and out-of-hours contact details);
- xii) evidence of community involvement and/or public consultation prior to any works being carried out; and
- xiii) details of the hours of operation of all operational and construction vehicles on the site.

Details of how measures will be put in place to address any environmental problems arising from any of the above shall be provided. A named person shall be appointed to deal with complaints and shall be available on site and their availability made known to all relevant parties.

The Statement as approved shall be adhered to at all times throughout the construction period.

- 11) No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved in writing by the LPA. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - i) a timetable for the scheme's implementation; and
 - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for the adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 12) No part of the development shall be occupied until a Travel Plan, including a timetable for implementation and periodic review, has been submitted to and approved in writing by the LPA. The Travel Plan shall be implemented as approved.
- 13) No development hereby permitted shall take place until a detailed scheme of highway works for improvement to the A27/Yapton Lane junction has been submitted to and approved in writing by the LPA and no more than 50 dwellings of the development hereby permitted shall be occupied until the completion of the approved improvements to the A27 junction with Yapton Lane.
- 14) Development shall not commence until a programme of archaeological work has been implemented and completed in accordance with a written Archaeological Mitigation Strategy document to be submitted to and approved in writing by the LPA. This should include an historic environment desk-based assessment, to include an assessment of the potential to encounter previously unknown archaeology and its potential significance. The Mitigation Strategy shall outline appropriate specific methodology and include commitments to:

- i) carry out on-site archaeological investigation in accordance with an agreed project design. This shall include but not be limited to archaeological field-walking and geophysical survey, in order to inform any trial trenching;
 - ii) use the results of trial trenching together with the results of other assessment to identify areas that warrant further archaeological investigation in advance of development as appropriate, such as open excavation or an archaeological watching brief;
 - iii) preserve in situ and intact non-designated archaeological heritage assets that are demonstrably of equivalent significance to Scheduled Monuments (with reference to Historic Environment guidance in Paragraphs 132, 133 and 139 of the National Planning Policy Framework);
 - iv) fully investigate, record, analyse and report, to a specification to be submitted to and approved in writing by the LPA, and to a standard proportionate to their significance, archaeological heritage assets that unavoidably will be affected adversely by development-related ground excavations; and
 - v) prepare and implement satisfactory procedures to communicate the findings of archaeological investigation to the local community, including involvement in community archaeological projects where appropriate.
- 15) Construction of the development shall not commence until details of the proposed means of foul water sewerage have been submitted to and approved in writing by the LPA. No dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 16) Details of the laying out of a minimum 400 sq m area designated as a Local Equipped Area of Play (LEAP) and three Local Areas of Play (LAP), each of at least 100 sq m, and all other amenity areas (other than private gardens) to be provided on site together with their defined boundaries, means of enclosure, proposed use and items of equipment and other structures to be installed shall be submitted to and approved in writing by the LPA. No more than 50 dwellings shall be constructed unless or until the amenity areas including the LEAP and at least two LAPs have been laid out in accordance with the approved details.
- 17) The development hereby permitted shall be carried out in accordance with the recommendations set out in the Extended Phase 1 Habitat Survey prepared by Corylus Ecology and submitted with the planning application. This shall include updates to the existing Phase 1 Habitat Survey and any necessary protected species surveys undertaken no less than 12 months prior to the commencement of development and measures to avoid or mitigate ecological impacts and provide ecological enhancements. Details shall be submitted to the LPA and approved in writing prior to the commencement of development.

(End of the conditions schedule)

APPEARANCES

FOR THE APPELLANT

Graeme Keen, of Counsel

instructed by Phoenix Planning Consultancy

He called

Paul Collins BA (Hons) Dip TP MRTPI

Phoenix Planning Consultancy

FOR THE LOCAL PLANNING AUTHORITY

Felicity Thomas, of Counsel

instructed by Arun District Council

She called

Fiona Fitzgerald

Senior Environmental Health Officer, Arun District Council (ADC)

Peter Hayward BEng (Hons) CEng
MICE MCIHT DMS

Director, Island Highway & Transport Consultants Limited, on behalf of West Sussex County Council

Neil Crowther

Group Head of Planning, ADC

David Bowie BSc (Hons) MCIHT

Managing Consultant, Transportation Department, Atkins, on behalf of Highways England

David Innes BA (Hons) Dip TP MRTPI

Director, Blueprint Planning & Development Limited, on behalf of ADC as a retained planning consultant within the Strategic Development Team

INTERESTED PERSONS

Victoria Newman

Chair of Yapton Parish Council Planning Committee

Patricia Wales

Local resident

Elaine Cordingley

Local resident

Andy Faulkner

Local resident, former Chairman of Yapton Neighbourhood Plan Group

John Mills

Local resident

DOCUMENTS (handed in at the Inquiry, all prefixed INQ)

1. Drawings forming part of the application
2. Drawings included within the Transport Assessment
3. Redacted copies of noise complaints made to ADC
4. Highways England consultation response, dated 3 November 2017
5. Letter from the ADC Head of Planning Policy and Strategic Development to Town and Parish Clerks, dated 18 November 2016
6. Draft of second s.106 Unilateral Undertaking on behalf of the appellant
7. Appellant's opening statement
8. Council's opening remarks
9. Yapton Parish Council's additional statement
10. Elaine Cordingley's statement
11. Patricia Wales's statement
12. Copy of letter from ADC to the Rt Hon Nick Gibb MP and Mr Gibbs's response to John Walker
13. John Mills's statement
14. List of the appellant's appendices
15. Andy Faulkner's statement
16. Copy of the appellant's Appendix 3
17. Bundle of photographs from Mr Bowie (Highways England) of traffic at the A27/Yapton Lane junction
18. Plan showing the Bognor Regis Relief Road
19. Copy of the judgement regarding Mayowa-Emmanuel v Royal Borough of Greenwich [2015] EWHC 4076 (Admin)
20. Extract from the PPG, paragraph 21a-006-20140306
21. Explanation of WSCC Fire and Rescue Service requirements for s.106 contributions
22. Copy of letter from Philip and Mary Kinnersley to the Head of Planning Policy and Strategic Development, ADC, dated 15 December 2016
23. Signed s.106 Unilateral Undertaking, dated 14 December 2017
24. List of suggested conditions
25. Highways England suggested condition regarding A27/Yapton Lane mitigation
26. Council's closing submissions
27. Appellant's closing submissions
28. Statement from Elaine Cordingley
29. Costs application on behalf of the appellant
30. Costs application on behalf of the Council