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# Appeal Decision

Inquiry held on 12, 13, 14 and 15 September 2017

Site visit made on 15 September 2017

**by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 02 November 2017**

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## **Appeal Ref: APP/L3815/W/17/3173380**

### **Land at Breach Avenue, Southbourne**

- 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 Beechcroft Land Ltd against the decision of Chichester District Council.
  - The application Ref SB/16/03569/OUT, dated 31 October 2016, was refused by notice dated 8 February 2017.
  - The proposal is the development of up to 34 dwellings, access, retention of orchard, public open space and other associated works.
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for the development of up to 34 dwellings, access, retention of orchard, public open space and other associated works at land at Breach Avenue, Southbourne, in accordance with the terms of the application, ref SB/16/03569/OUT, dated 31 October 2016, subject to the conditions set out in the attached schedule.

### **Preliminary Matters**

2. The application was made in outline with all matters except access reserved for further approval. The application was accompanied by Illustrative Site Layout Plan reference 0001-13. However, it was agreed at the Inquiry that the appeal should be considered on the basis of Concept Layout reference 0004-02 which was submitted with the appeal. The Council and interested parties were familiar with this plan and I have, therefore, taken it into account as indicative of the proposed site layout.
3. The second reason for refusal alleges that, in the absence of a Planning Obligation, the proposal fails to make adequate provision for affordable housing, the implementation, management and maintenance of areas of on-site landscaping and open space or a financial contribution towards junction improvements on the A27 road. Nor would it make provision to meet the burden which future residents would place on the Chichester and Langstone Harbours Special Protection Area. Draft and revised draft Planning Obligations which address those matters were submitted at the Inquiry. The revised draft<sup>1</sup> reduces the affordable housing provision from 40% to 30% of the total number dwellings so as to accord with the relevant development policy to the

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<sup>1</sup> Inquiry document (ID) 30

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satisfaction of the Council. The appellant's housing witness did not, therefore, give detailed evidence on affordable housing matters.

4. A signed and dated version of this Obligation was submitted subsequently<sup>2</sup>. Whilst the matters in the second reason for refusal are, therefore, no longer in dispute, I need to be satisfied that the Obligation meets the tests set out in the Community Infrastructure Levy Regulations 2010 (CIL Regs). I shall return to this matter later in the decision.

### **Main Issues**

5. Having regard to the above considerations, the main issues are:
  - the effect of the proposal on the development plan strategy for the location of residential development;
  - whether the Council is able to demonstrate a five year supply of housing land.

### **Reasons**

#### *Development Plan Strategy*

6. The development plan comprises the adopted Chichester Local Plan Key Policies 2015 (LP) and the made Southbourne Parish Neighbourhood Plan 2015 (NP). Policy 1 of the LP reflects the presumption in favour of sustainable development set out in paragraph 14 of the National Planning Policy Framework (the Framework). Policy 2 sets out the settlement hierarchy for the District, with Chichester city at the top and Southbourne and three other locations as second tier Settlement Hubs. Below the Settlement Hubs are Service Villages and the Rest of the Plan Area, which comprises smaller settlements and the countryside. Strategic development in the form of medium-scale extensions is identified at Settlement Hub locations including Southbourne. The policy includes a presumption in favour of sustainable development within settlement boundaries. These boundaries are to be reviewed through Development Plan Documents and Neighbourhood Plans. Development in the Rest of the Plan Area is restricted to that which requires a countryside location or meets an essential local need.
7. Policy 5 of the LP makes provision for small scale housing to meet local community needs on sites to be identified in neighbourhood plans. In Southbourne, excluding Southbourne Village and strategic allocations, an indicative number of 50 units is proposed. Policy 20 makes provision for strategic development in Southbourne. Such development is to be allocated in the NP and will include 300 homes. Policy 45 states that development outside of settlement boundaries will be granted where it requires a countryside location and meets essential, small scale and local needs. The Council's planning proof also refers to LP Policy 33 which deals with the design of residential development. However, no conflict with this policy is alleged.
8. Policy 1 of the NP supports development proposals located within the settlement boundaries identified on the Policies Map. Those boundaries have been amended to allow for the allocation of four housing sites for a total of 350 units under Policy 2. Development has been completed, commenced, or planning permission granted for a total of 357 units in accordance with these NP

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<sup>2</sup> ID 33 Planning Obligation dated 21 September 2017

- allocations. Policy 3 proposes the establishment of a Green Ring around the village of Southbourne.
9. The appeal site comprises essentially undeveloped land which was formerly used as an orchard. It abuts the eastern edge of established residential development at Breach Avenue as well as Fraser Gardens and East Field Close. However, the site falls outside of the settlement boundary as defined in the NP and is not allocated for any form of development. Nor is it claimed that the appeal proposal would meet an essential, small scale and local need. It is common ground, therefore, that the proposal would be contrary to LP Policies 2 and 45.
  10. The Council considers that the proposal is also in conflict with LP Policy 5 and NP Policies 1 and 2 on the basis that the unplanned provision of 34 dwellings would be at variance with the development strategy for Southbourne which was properly considered through the LP and NP preparation processes.
  11. The appellant contends that these policies are silent on the question of housing development outside of settlement boundaries and are, therefore, not relevant to the appeal proposal. The appellant points to the NP Examiner's Report<sup>3</sup> which recommended the omission of wording from Policy 1 which would have required development outside of settlement boundaries to conform to development plan policy for the control of development in the countryside. Moreover, it is argued that the scale of development proposed would not be inconsistent with the overall size of Southbourne or the level of development anticipated there in the development plan strategy. The appellant draws support for its approach from an appeal decision at Newick<sup>4</sup>.
  12. I agree with the appellant that the policies in question do not directly presume against development outside of settlement boundaries. Furthermore, it was accepted by the Council that LP Policy 5 does not set a cap on the amount of housing which may be provided. That much is plain from the policy's use of the phrase 'indicative housing numbers.'
  13. Nevertheless, nor is there anything in the NP policies which supports the proposal. Indeed, it is clear that the way in which the settlement boundary was amended under NP Policy 1, and the housing allocations located under Policy 2, was the result of an intention to avoid further development north of the railway line in order to minimise congestion at the Stein Road level crossing<sup>5</sup>. I also heard from interested parties at the Inquiry, as well as others in written submissions, how important this consideration was to local people in the preparation of the NP. The appeal site is located to the north of the railway line. For this reason it was considered and rejected as a housing location during the NP preparation process. I consider below the effect of the proposal on congestion at the crossing. However, at this stage, it is pertinent to recognise that the proposal is at odds with the aims of the NP with regard to the location of new housing.
  14. The NP Examiner explains the reason for recommending the amendment to Policy 1 at paragraph 5.9 of his Report. He says that it would not be appropriate for the NP to require proposals outside of settlement boundaries to

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<sup>3</sup> Core Document (CD)6.22

<sup>4</sup> CD2.1 Appeal reference APP/P1425/W/15/3119171

<sup>5</sup> NP paragraph 4.7 and Examiner's Report paragraph 5.15

conform to development plan policy for the countryside; that responsibility should be for the District Council through its development plan policies. It seems to me therefore, that the Examiner was not offering support for development outside of settlement boundaries. Rather, he was merely seeking to ensure that the matter is dealt with at the appropriate level of plan making. That approach is consistent with the principle that proposals should be determined in accordance with the development plan when read as a whole, unless material considerations indicate otherwise.

15. I recognise that there are many parallels between the considerations in this appeal and those in the Newick case. In particular, the recognition that the policies of the Joint Core Strategy (JCS) and Newick Neighbourhood Plan did not place a cap on development in the settlement. Notwithstanding that the Newick Neighbourhood Plan was made before the full extent of housing allocations in the JCS had been established, it is also relevant that the scale of the proposal in that case was, relative to the size of the settlement, greater than in this case.
16. Moreover, it was accepted by the Council's planning witness that the housing numbers for Southbourne in the LP are not maximums. Furthermore, notwithstanding a suggestion to the contrary in the Council's closing submissions, its planning witness accepted that, had the 34 units been located within the settlement boundary, there would have been no objection on the basis of the scale of the proposal. There is no firm evidence to indicate that the proposed 34 units would be incompatible with the scale of Southbourne as a whole or that future occupiers would not be adequately served by reasonably accessible local services and facilities. Indeed the Council accepted that the site is sustainably located in that regard.
17. I recognise that the indicative figures in the LP represent a considered policy response to the scale of development to be accommodated in Southbourne. However, the proposal would represent an increase of less than 10% over the 350 dwellings earmarked for Southbourne as a whole. Since the site adjoins the established built up area and is fairly well linked to its facilities, I consider this to be a more useful comparison than the Council's reference to the 50 dwellings indicated in LP Policy 5. It also distinguishes the proposal from the Hambrook appeal cited by the Council<sup>6</sup>. In that case 120 dwellings were proposed in a considerably smaller settlement where just 25 additional units were allocated in the Local Plan. Consequently, I consider that the scale of the proposal, as opposed to its location, would not be at odds with the broad development plan strategy for new housing as indicated in LP Policies 5 and 20.
18. The silence of NP Policies 1 and 2 on the question of development outside of settlement boundaries is a not a positive point in favour of the appeal proposal. As such, it does not outweigh the proposal's conflict with LP Policies 2 and 45 and its lack of accord with the aim of the NP with regard to the location of new housing. Therefore, I find that the proposal would be contrary to the development plan strategy for the location of residential development when considered as a whole. I consider below the weight to be attached to this conflict.

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<sup>6</sup> Appeal reference APP/L3815/W/15/3004052

### *Housing Land Supply*

19. It is common ground between the parties that the District's policy-based housing requirement in the five year period 2017 to 2022 is 2175 dwellings, giving an annual average of 435. This is less than the full objectively assessed need (OAN) of 505 dwellings due to environmental and infrastructure constraints which are not disputed. Taking into account the shortfall over the first five years of the plan period and a 20% buffer for historic under-delivery, the total five year requirement is agreed to be 3053 dwellings.
20. Nor do the parties disagree over the contribution to the housing land supply made by most the sites on the Council's Schedule of Housing Sites<sup>7</sup> or its windfall allowance. The essence of the dispute is the contribution made by four sites. Here the difference between the parties amounts to some 470 units. The Council contends that the total supply is 3085 dwellings, or 5.05 years, whereas the appellant puts the total supply at 2613 dwellings or 4.28 years<sup>8</sup>.
21. Framework Footnote 11 advises that, to be deliverable, sites should be available now, in a suitable location and be achievable with a realistic prospect of delivery within five years. The appellant argues that the Council's track record of forecasting the delivery of housing has been, and continues to be, over-optimistic. In particular, the Council has not taken sufficient account of the activities which need to be completed between the grant of planning permission and the completion of the first dwellings on site. The appellant's evidence includes examples of typical timescales for completing these tasks for medium and large sites. The Council recognises that, whilst it may have been over-optimistic in the past, its approach has improved recently. Specifically, it has taken on board the findings of the Inspector in a recent decision on a site at Oving Road<sup>9</sup>. Indeed, its housing supply figures for the disputed sites in this case reflect the Oving Road decision. I deal with the disputed sites in turn.
22. *West of Chichester* The units to be delivered from this site form part of a strategic allocation of 1600 dwellings. Phase 1 has a resolution to grant outline planning permission for 750 units. The build rates assumed by the parties are not very different. The largest part of the difference in delivery comes from when the parties consider development would commence. The Council says phase 1 of the site would deliver of 200 units commencing in 2019/20, whereas the appellant says 75 units commencing in 2021/22. Phase 2 is dependent on the provision of a southern access which the developer expects in 2021<sup>10</sup>. The Council considers that this phase will deliver a further 80 units commencing in 2020/21; the appellant considers that no units will be delivered from Phase 2 in the five year period.
23. The discrepancy in the parties' start dates arises from differing interpretations of a progress report to the Council's Planning Committee in July 2017<sup>11</sup>. I note that this report post-dates the Oving Road Inquiry and there is nothing to suggest that the Inspector was aware of its content when he wrote that decision.

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<sup>7</sup> ID 7d

<sup>8</sup> ID 4, table 3

<sup>9</sup> ID 7a – Appeal reference APP/L3815/W/16/3165228

<sup>10</sup> Developer's timeline and commentary at Appendix 17 of Mr Davidson's proof

<sup>11</sup> Appendix 19 of Mr Davidson's proof

24. The progress report recognises that there has been some slippage in the signing of the S106 agreement, although conclusions have been reached on the majority of outstanding issues. The appellant's housing witness nevertheless considered that the developers would be unlikely to sign the agreement pending the resolution of commercial negotiations. The site is under option to Linden Homes and Miller Homes and the negotiations include agreeing the site land price as well as the acquisition of third party land to provide the second access. The Council considers that these matters have largely been dealt with through the S106 agreement negotiations and that there is no reason to expect them to result in significant delays. The appellant points to outstanding issues relating to third parties matters identified in the progress report and considers that two years from October 2018 would be required to complete the negotiations. Neither party produced substantive evidence on the state of the negotiations since the progress report was prepared.
25. The progress report is new information since the Oving Road Inspector considered this site. In my view the appellant is right to express concern over the time needed to resolve the issues it identifies. However, there is nothing to suggest that there are particularly intractable problems regarding either price negotiations or the acquisition of third party land. Moreover, it would be reasonable to expect such negotiations to commence before October 2018. On that basis, I consider that it would be realistic to expect first completions at phase 1 in 2020/21 and first completions in phase 2 in 2021/22. Assuming build rates generally in line with the parties, this would allow a total of around 200 units to be delivered in the five year period, some 80 fewer than the Council's trajectory.
26. *Land on the north side of Shopwyke Road* This site is currently under construction by a single housebuilder (Cala Homes) and the first units have been completed. The dispute between the parties concerns the build rate for the remainder of the five year period. The Council has had regard to information provided by the site's planning agent, but has adopted a more cautious rate of 48 private units per year plus 25 affordable units, giving a total of 73 units per year. This figure was accepted by the Oving Road Inspector. However, there is nothing to suggest that the delivery sales for this site were a matter of dispute between the parties in that case. As such, the Inspector had no reason not to accept the Council's position. In support of its case in this appeal the Council also points to information provided by West Sussex County Council which indicates that 76 units had commenced by May 2017<sup>12</sup>. I also saw on my visit to this site that a significant number of units have commenced and that some are occupied. Nevertheless, as the appellant argues, there is a difference between the commencement of work on a dwelling and its completion and subsequent sale. I am not persuaded therefore that, of itself, the County Council information provides a robust basis for predicting sales rates over the next five years.
27. The appellant's position is based on a sales rate of 3.33 units per month provided by Cala Homes<sup>13</sup>. It would appear that this information was not available to the Oving Road Inspector. It was accepted by the Council that the sales rate is relevant as it influences how quickly a housebuilder will build out a site. The private sales rate in this case would be somewhat greater than the

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<sup>12</sup> ID 11a

<sup>13</sup> Appendix 1 of Mr Hewett's Supplemental Proof

- national sales rates reported in the appellant's evidence<sup>14</sup>. Allowing for a proportion of cancellations of private sales, and adding the affordable housing, the appellant considers that the site would deliver around 50 units per year. Whilst the Council did not dispute the appellant's evidence on national build rates, there was contradictory evidence regarding whether it can be applied to particular sites. The Council pointed to the favourable location of the Shopwyke Road site and relative lack of competing developments; the appellant argued that Cala Homes produces a 'premium' product which tends to sell more slowly.
28. The build rate adopted by the appellant is higher than the national average. Moreover, the Council's build rate for this site, which will have a single housebuilder, is approaching that it adopted for the West of Chichester site where there will be two housebuilders. Consequently, I consider that build rate for this site would be more in line with that put forward by the appellant. This would result in some 100 fewer units being delivered over the five year period.
29. *Bartholomews, Bognor Road* This site is split into two phases. The first phase land is vacant and has a reserved matters consent with all conditions discharged, but which expires on 18 October 2017. Planning permission has also been granted for a second phase of 57 units. However, commencement of this phase relies on the relocation of part of the Bartholomews operation and would follow on from phase 1. Planning permission has been granted for the relocation of Bartholomews. Bellway Homes is understood to be in negotiations with the landowner, although there is no confirmation that they have committed to developing the site. Moreover, the Council's witness accepted that the permitted scheme for phase 1 would be unlikely to suit the requirements of a housebuilder such as Bellway and it is likely that permission for a revised scheme would be sought. There is nothing to suggest that the Oving Road Inspector was made aware of this consideration.
30. That said, there is no firm evidence to indicate any impediments to obtaining permission for a revised scheme or that an agreement between Bellway and the landowner could not be advanced in parallel. Therefore, even if there was slippage of a year or so from the Council's projected completions starting in 2019/20 in order to allow those matters to be concluded, I consider that there is a realistic prospect of phase 1 delivering 51 units by 2022. A slippage in phase 1 would, nevertheless, push phase 2 back into the final year of the five year period. Given my findings above on build rates, it seems unlikely that phase 2 would deliver all of the 57 units in a single year. Consequently, I consider that a small reduction should be made in the supply from this site.
31. *Land north of Stane Street* This site has an outline planning permission and some conditions have been discharged, although applications to discharge others, and to approve reserved matters, have yet to be made according to information provided by the housebuilder<sup>15</sup>. The same information estimates four months from the start of housing construction to the first completions in August 2018. The Council's witness accepted that this was over-optimistic. I also note that the Oving Road Inspector expected delivery to occur in the third quarter of 2019/20<sup>16</sup>. Whilst, the build rate of 50 units per year adopted by that Inspector is somewhat higher than the national average rate agreed in this appeal, he points to the site's greenfield nature, lack of constraints and

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<sup>14</sup> Appendix 6 of Mr Hewett's Proof

<sup>15</sup> Barratt Homes email at ID 11b

<sup>16</sup> ID 7a paragraph 56

marketable location. However, even adopting that build rate, I consider that the supply from this site should be reduced in order to allow for a more realistic period from the start of works to the first dwelling completions.

32. My conclusions on the four disputed sites indicate that a substantial reduction should be made from the Council's total housing land supply. Given that the Council's supply figure is only 32 units greater than the agreed requirement, I find that the Council cannot demonstrate a five year supply of deliverable housing land. I consider the implications of this finding in the Planning Balance below.

### *Other Matters*

33. The site was formerly an orchard and it has been assessed as a Traditional Orchard Priority Habitat in a report by the People's Trust for Endangered Species<sup>17</sup>. Although the report was commissioned by Natural England, the site has yet to be included on its listing. It would appear that the assessment was based on aerial photography and that no on-site survey was undertaken. An Ecological Assessment Review Report was undertaken on behalf of a local resident<sup>18</sup> which did include an extended Phase 1 habitat survey. Whilst it recommended the strengthening of mitigation proposals in the then applicant's Ecological Assessment, it did not find that the bio-diversity value of the site should preclude development. I have also had regard to the Ecological Data Search undertaken by Sussex Biodiversity Record Centre<sup>19</sup>, although, as the document title implies, it does not provide site specific information or recommendations. Nevertheless, I heard from local residents of sightings of animals including barn owls, bats and slow worms, the value placed on the site as a 'stepping stone' for wildlife and the concern that a significant part of a valued habitat would be lost as a result of the proposal.
34. The Friends of Breach Avenue Orchard have produced a Draft Community Management Plan. It anticipates that the land would be registered as an Asset under Community Right to Buy legislation and sets out proposals for the community management of the site as a Traditional Orchard and education resource by a Charitable Incorporated Organisation.
35. An Ecological Assessment (EA) and Update<sup>20</sup> were prepared on behalf of the appellant. The EA was based on an extended Phase 1 habitat survey and bat, badger, reptile and invertebrate surveys. It found that the western part of the site has the characteristics of a Traditional Orchard, albeit one currently in poor condition. The orchard on the eastern part of the site is in very poor condition and the shading from bramble cover reduces its potential for ecological interest. The EA also found no evidence of badger usage of the site, low to moderate bat activity, a medium population of slow worms and a low population of grass snakes. Two invertebrate Species of Principal Importance were found and the potential of trees within the site to support nesting birds was identified. Whilst I recognise that the survey work undertaken for the EA was, necessarily, a snapshot, rather than the extended periods of observation available to local residents, there is nothing to suggest that it was not done in accordance with relevant guidelines or fell short of the survey effort required of a site of this

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<sup>17</sup> ID 20

<sup>18</sup> Acorn Ecology Ltd November 2014

<sup>19</sup> Report reference SxBRC/17/190

<sup>20</sup> Ecology Solutions dated August 2014 and September 2016 respectively



- type. I also note that the findings of the EA have not been questioned by the Council or its consultees.
36. The EA recommends a series of mitigation and enhancement measures, principal among which is the retention and improved management of the western part of the orchard. This aims to raise its condition from poor to excellent. A 5m wide landscape buffer would be provided around the site boundary together with a sustainable urban drainage feature. Recommendations are also made for the protection of birds and bats, including the provision of replacement trees and habitats and bird and bat boxes. The retention and management of the western orchard would provide a suitable habitat for the identified invertebrate species. Reptiles would be trapped and relocated. Some of these measures could be secured through the provisions of the Planning Obligation and others by use of planning conditions. The Planning Obligation also makes provision for the future maintenance of the retained orchard and landscape buffer, including the potential for them to be transferred to a resident-controlled company.
37. Whilst the proposal would lead to the loss of the former orchard on the eastern part of the site, that area has been neglected, is in a very poor condition and has low potential to support fauna. I consider that its loss would be offset by new planting and the retention and improved maintenance of the western orchard, together with the potential for increased bio-diversity offered by the landscape buffer. There is no firm evidence to suggest that the size of these features would not provide viable habitats, or that the site would not continue to act as a stepping stone in the wider network of wildlife sites. Together with the proposed area of public open space, they would also contribute to the Green Ring around Southbourne sought under NP Policy 3.
38. The terms of the Planning Obligation also allow the opportunity for community involvement with financial support. This package of measures would be enforceable by the local planning authority and would offer certainty over the future of the orchard. On the other hand, the Friends of Breach Avenue Orchard is a loosely constituted group and I have not been provided with evidence to show that the arrangements necessary to realise its Draft Management Plan are in place. Taking this consideration together with the mitigation measures outlined above, I consider that the appeal proposal would be moderately beneficial with regard to bio-diversity.
39. Concern has been expressed locally regarding the effect of the proposal on the highway network in terms of movements along Breach Avenue and additional congestion at the Stein road railway crossing. Breach Avenue is a cul de sac with no formal turning head. The road is subject to on-street parking and its width means that vehicles can only pass parked cars in one direction at a time. I saw on the site visit that cars tend to park on the south side of the road only.
40. The appellant has produced a Transport Statement and Transport Statement Addendum (TSA)<sup>21</sup>. Amongst other things, the TSA found that there have been no personal injury accidents in the vicinity of the site. It is proposed to provide parking in accordance with West Sussex County Council's Car Ownership Parking Demand Tool. Moreover, the application was made in outline and the number and layout of the proposed parking spaces would be subject to further

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<sup>21</sup> Peter Evans Partnership dated August 2014 and September 2016 respectively

- approval. As such, there is no reason to expect the proposal to generate additional parking demand in Breach Avenue.
41. The TSA estimates traffic generated by the proposal based on published data. Whilst these figures have been questioned by a number of local residents, I note that they have been verified by West Sussex County Council Highways section and the data source used is a widely recognised. They show that the development would generate 18 movements in the morning peak hour and 20 movements in the afternoon peak. This equates to no more than one movement every three minutes on average. Even allowing for one way movements passed parked cars in Breach Avenue, I am not persuaded that this level of additional traffic would lead to significant highway safety or congestion problems or impede access by emergency vehicles. The proposed provision of a turning facility just inside the site boundary would be a general benefit to road users.
  42. The concerns expressed regarding the effect of additional traffic from the development on congestion at the railway crossing echoes those aired during the preparation of the NP and which led to the plan's exclusion of new residential development north of the railway line. Therefore, I recognise the strength of feeling locally on this matter and, indeed, I saw on the site visit how traffic queues form when the crossing is closed during the busy morning period. However, that situation exists at present and, in determining this appeal, I must consider whether the proposal would exacerbate it.
  43. Whilst there is reference in the NP Examiners Report to a Chichester District Transport Study, it finds that the reasoning for locating development to the south of the railway is 'pragmatic'. Closure times and queue lengths at the crossing were measured for the TSA. It found that the barrier is closed for a total of some 25 minutes on the morning peak hour with an average closure time of 4 minutes and an average queue length of 13 vehicles on the north side. In the evening the closure time was slightly shorter, but the queue length slightly longer. These total closure times are broadly consistent with the times given at NP paragraph 4.9. The TSA estimates that the appeal proposal would add one vehicle every five minutes to the south-bound queue in the morning and one vehicle every 15 minutes in the evening. For the north-bound queue, the estimates were one vehicle every 20 minutes in the morning and one every seven minutes in the evening. This is the most detailed available evidence. I appreciate that any additional vehicles would contribute to a situation which is already causing concern. Nevertheless, in practical terms, the number of additional vehicle movements generated by the proposal would not materially increase the waiting times at the crossing. Therefore, I consider that the proposal would not cause harm in this regard.
  44. The appeal site falls within Environment Agency Flood Zone 1 and the proposal is supported by a Flood Risk Assessment which finds that the development would not be at risk of flooding. With regard to foul drainage, Southern Water's initial consultation response stated that flows from the development could not be accommodated without providing additional local infrastructure. I heard evidence that a scheme to provide a relief sewer to serve the north of Southbourne is under consideration by Southern Water but will not be available within three to five years. However, the planning officer's report on the application states that further consultation with Southern Water has taken place and that flows from the site could be accommodated by more limited works to

the local drainage system. There is nothing to suggest that such works could not be undertaken within the lifetime of any planning permission. A condition would ensure that no development would commence until details of those works had been agreed and no dwellings occupied until they are completed.

45. A site investigation<sup>22</sup> has been undertaken which shows that surface water from the development could be discharged using ground infiltration. The details of such a scheme could be secured by condition. Consequently, I consider that the proposal would not lead to flooding or overload the local drainage system.
46. Concern has also been expressed regarding the effect of the proposal on the living conditions of occupiers of neighbouring properties. Whilst the layout of the development is subject to further approval, the retention of the orchard on the western side of the site would create a significant buffer between those properties and the new dwellings. Together with careful consideration of the detailed layout of the development at the reserved matters stage, this would ensure that the development would not unduly affect the living conditions of existing occupiers.

### **Planning Balance**

47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal conflicts with LP Policies 2 and 45 and does not accord with the aim of the NP with regard to the location of new housing.
48. Nonetheless, I have concluded that the Council cannot demonstrate a five year supply of housing as required by the Framework. Framework paragraphs 49 and 14 advise that, where a five year housing land supply cannot be demonstrated, relevant development plan policies should be considered out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. This consideration distinguishes the appeal proposal from the Wivelsfield decision<sup>23</sup> cited by the Council where it was found that a five year supply existed.
49. Even taking the Council's figure for the number of housing units to be delivered over the next year years, the supply land supply position would be marginal. However, I have found that substantially fewer units are likely to be delivered. The appellant also considers that the LP is out of date pending the adoption of the DPD. However, there is nothing to suggest that the settlement boundaries for Southbourne will be affected by the completion of that process. Therefore, whilst Policies 2 and 45 are relevant to the supply of housing, I consider that they should still carry moderate weight in the determination of this appeal. I have also found that the scale of the proposal would not be at odds with the level of residential development in Southbourne indicated in LP Policies 5 and 20. Furthermore Southbourne is identified in the LP as a Settlement Hub where strategic development is anticipated. Nor have I found that proposal would lead to other direct harms. Therefore, notwithstanding the conflict with the terms of LP Policies 2 and 45, in practice, the degree of harm to the development plan strategy would be limited.

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<sup>22</sup> Flood Risk and Drainage Strategy, Clive Onions 7 August 2014.

<sup>23</sup> Appeal reference APP/P1425/W/16/3145053

50. Framework paragraphs 184 and 198 advise that neighbourhood planning provides a powerful tool for local people to ensure that they get the right type of development and that proposals which conflict with a made Neighbourhood Plan should not normally be granted. Paragraph reference 41-083-20170810 of the Planning Practice Guidance advises on the application of the Written Ministerial Statement on Neighbourhood Planning dated 12 December 2016 following the Hopkins Homes Supreme Court judgement<sup>24</sup>. It advises that where, as in this case, the criteria in the Written Ministerial Statement apply, significant weight should still be given to the Neighbourhood Plan notwithstanding the fact that the local planning authority cannot demonstrate a five year supply of deliverable housing sites. I recognise that a great deal of time and effort was invested in the preparation of the NP and that local people responded positively to Government policies on neighbourhood planning. Allowing the appeal could be seen to undermine confidence in the planning process. These matters form part of the social dimension of sustainability which, Framework paragraph 7 advises, includes supporting strong, vibrant communities.
51. However, I have found that the proposal would not conflict with the policies of the NP and would not materially exacerbate congestion at the railway crossing. As such, it would not cause harm in respect of the underlying reason why the NP seeks to restrict development north of the railway line. Moreover, Framework paragraph 8 requires the social, economic and environmental roles of sustainability to be considered together.
52. Framework paragraph 47 seeks to significantly boost the supply of housing. This too is part of the social dimension of sustainability. The LP examiner's report found that environmental and infrastructure restrictions in the District justified a housing target which was lower than the OAN. The Council's housing witness also accepted that the OAN is likely rise in the future. With these considerations in mind, the provision of 34 new dwellings in a location with reasonably good access to local facilities and public transport and no significant environmental or infrastructure constraints would make a valuable contribution to the supply of housing. The proposal would also contribute to the provision of affordable housing in an area of high housing need. Taken together, I consider that these amount to very significant benefits.
53. The appellant also points to the economic benefits of the proposal through construction employment and activity, spending by future residents at local facilities and the New Homes Bonus. Collectively, these amount to moderate benefits of the proposal.
54. The proposed publicly accessible open space, new planting and ecological enhancements would generally align with the Green Ring to be established under NP Policy 3. These features would, therefore, offer moderate environmental benefits. The provision of a turning facility at the end of Breach Road would also be a limited benefit of the proposal.
55. Overall therefore, I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal benefits from the presumption in favour of sustainable development set out in Framework paragraph 14 and LP Policy 1. This

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<sup>24</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

consideration is sufficient to overcome the conflict with LP Policies 2 and 45 and the aim of the NP with regard to the location of new housing.

### *Planning Obligation*

56. Regulation 122 of the CIL Regs states that a planning obligation may only constitute a reason for granting planning permission if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
57. Policy 34 of the LP requires 30% of new dwellings to be affordable on sites of 11 or more dwellings. The submitted Planning Obligation makes provision for a total of 11 units in a mix of tenures and sizes which accord with the advice of the Council's Housing Enabling Officer (HEO) and the requirements of its Strategic Housing Market Assessment. The HEO also advises that Southbourne is an area of high housing need. I am content, therefore, that the affordable housing Obligation meets the Regulation 122 tests and have taken it into account.
58. The site is within 5.6km of the Chichester and Langstone Harbours Special Protection Area (SPA). Natural England advises that, without mitigation, new residential development within this zone is likely to have a significant effect on the SPA. Policy 50 of the LP seeks a financial contribution toward the Solent Disturbance and Mitigation Project and the Council's Planning Obligations and Affordable Housing Supplementary Planning Document (SPD) sets out the level of the contribution necessary and its indexation. Contributions to this project are included on the Council's list of projects excluded from CIL Regulation 123. As such, I am satisfied that the Recreation Disturbance Mitigation Contribution contained in the Obligation accords with the tests set out in the CIL Regs and have taken it into account.
59. Amongst other things, LP policy 8 identifies a co-ordinated package of improvements to junctions on the A27 Chichester by-pass in order to mitigate the impact of planned development on the highway network. The appeal site is reasonably close to the Fishbourne junction of the A27 and the SPD sets out the contributions required for developments at various locations, including those in Southbourne parish. The SPD also advises that the contributions will be made to Highways England via a Section 278 Highways Agreement, the requirement for which will be secured through a planning obligation. Whilst the appeal proposal is not 'planned development' in the sense of being allocated in the development plan, traffic generated by new dwellings would impact on the A27 junctions in a similar way to that from allocated sites. Consequently, I consider that the A27 Works Contribution in the Obligation is necessary and accords with the Regulation 122 test. I have taken it into account.
60. I have already referred to the need for an Obligation to secure the provision and management of the retained orchard and a landscape buffer. In addition LP Policy 54 seeks the provision of new open space in residential development, the details of which are set out in the SPD. The Obligation requires the provision and maintenance of open space in accordance with the requirements of the SPD. I consider, therefore, that the Open Space and Landscape Buffer Obligations meet the CIL Regs tests and have taken them into account.

### *Conditions*

61. The Statement of Common Ground sets out a list of 21 suggested planning conditions. Following the discussion on conditions at the Inquiry, it was agreed that suggested conditions 4 (external materials) and 20 (means of enclosure) were not necessary as these requirements would be secured through the approval of reserved matters. It was also agreed that condition 8 should be re-worded to refer to the general site layout principles contained in drawing number 004-02 and that condition 14 should be re-worded to require implementation of the submitted Travel Plan only. Such a condition is necessary to further sustainable travel policy objectives.
62. Suggested condition 21 was also discussed. It requires further details of utilities and services connections to be agreed and implemented. For the most part, such connections would be a normal part of the development of a residential site and I am not persuaded that it is necessary to impose a condition to secure their provision. Suggested condition 21 also refers to broadband ducting. I recognise that this service may not necessarily be adequately provided for as a matter of course. Nevertheless, Framework paragraph 42 promotes the provision of high quality communications infrastructure in the interests of sustainable economic growth. I will, therefore, amend the suggested condition to refer to broadband only. I have considered the suggested conditions against the advice in the Framework and the tests set out in the PPG. I have made such alterations as I consider necessary to comply with that advice.
63. A condition specifying the approved plan is necessary in the interests of certainty. I have already referred to the need for conditions dealing with the design, provision and maintenance of surface water drainage and the design and provision of a foul drainage scheme. The provision of cycle storage is necessary in the interests of sustainable travel. A condition to secure details and the implementation and retention of vehicle parking is necessary to ensure highway safety.
64. A condition to secure the provision and implementation of an archaeological written scheme of investigation is necessary to safeguard below ground heritage assets. In view of the residential character of the access to the site, a condition requiring the approval and implementation of a Construction and Environmental Management Plan is required in the interests of the living conditions of neighbouring occupiers and highway safety. A condition dealing with existing and proposed ground levels is necessary to safeguard the character and appearance of the area.
65. I have already found that conditions to secure ecological mitigation measures are necessary in the interests of biodiversity. Conditions dealing with the protection of retained trees and the details of external lighting are required for the same reason and to safeguard the character and appearance of the area.

### **Conclusion**

66. For the reasons set out above, the appeal should be allowed.

*Simon Warder*

INSPECTOR

## **Appearances**

### FOR THE COUNCIL

Gwion Lewis of Counsel, instructed by the Council's Solicitor

He called

Rhiannon Jones BSc(Hons), MSc, MA, MRTPI Senior Planning Officer, Chichester District Council

Robert Davidson BA, MA, MRTPI Principal Planning Officer, Chichester District Council

### FOR THE APPELLANT

Killian Garvey of Counsel, instructed by Guy Wakefield of Hunter Page Planning

He called

Dominic Farmer BSc(Hons), MSc, MCIEEM Director, Ecology Solutions

Andrew Kenyon BSc(Hons), MCIHT Director, Peter Evans Partnership

Guy Wakefield BA(Hons), MRTPI Director, Hunter Page Planning

Mark Hewett Senior Partner, Intelligent Land

### INTERESTED PERSONS

Roy Seabrook Southbourne resident

John Auric Southbourne resident and member of the Friends of Breach Orchard

Bill Ferguson Southbourne resident and Parish Councillor

Rebecca Prince Southbourne resident

ClIr Jonathan Brown District and Parish Councillor

**Documents submitted at the Inquiry**

- 1 Email from Miller Homes dated 7 September 2017
- 2 Appellant's Supplementary Proof on Housing Land Supply (HLS)
- 3 Statement of Common Ground Rev B
- 4 Housing Land Supply Statement of Common Ground
- 5 Inspector's Report for Wivelsfield appeal ref APP/P1425/W/16/3145053
- 6 Unused number
- 7a Council's Supplementary Proof on Housing Land Supply
- 7b HLS SP Appendix S1
- 7c HLS SP Appendix S2
- 7d HLS SP Appendix S3
- 8 Moulton Appeal Decision ref APP/Y2810/A/14/2225722
- 9a Draft Planning Obligation
- 9b Appendix A – Location Plan
- 9c Appendix B – Nomination Agreement
- 10 Core Document List Rev B
- 11a Email from West Sussex County Council
- 11b Email from Barratt Homes
- 12 Farnham Appeal Decision ref APP/R3650/W/16/3163124
- 13 Planning Practice Guidance paragraph 41-083-20170810
- 14 Appellant's opening submissions
- 15 Council's opening submissions
- 16 Sewage statement by Roy Seabrook
- 17 Statement by Bill Ferguson
- 18 Statement by Jonathan Brown
- 19 Neighbourhood Plan statement by Roy Seabrook
- 20 Friends of Breach Orchard information (presented by John Auric)
- 21 Robert Davidson Proof for the Oving Road appeal
- 22 Robert Davidson Rebuttal Statement for the Oving Road appeal
- 23 Email from Natural England dated 13 September 2017
- 24 Council's information on A27 Chichester Bypass Junction Improvements
- 25 Council's information on Review of Settlement Boundaries
- 26 'MAGIC' plan extract for Southbourne showing Traditional Orchards
- 27 Andrew Kenyon qualifications and experience
- 28 Dominic Farmer qualifications and experience
- 29 Email from Dominic Farmer dated 14 September 2017
- 30 Revised draft Planning Obligation
- 31 Council's closing submissions
- 32 Appellant's closing submissions

**Documents submitted after the Inquiry**

- 33 Signed and dated Planning Obligation



**Schedule of conditions attached to  
Appeal Ref: APP/L3815/W/17/3173380  
Land at Breach Avenue, Southbourne**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plan 0003-01.
- 5) The layout of the site submitted in accordance with condition 1 above shall follow the principles shown on drawing 0004-02.
- 6) No development shall commence until details of the proposed site wide surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The design shall follow the hierarchy of preference for different types of surface water drainage disposal as set out in Approved Document H of the Building Regulations and the SUDS Manual produced by CIRIA. Winter ground water monitoring to establish highest annual ground water levels and percolation testing to BRE 365, or similar approved, will be required to support the design of infiltration drainage. The surface water drainage scheme shall be implemented as approved unless any variation is agreed in writing by the Local Planning Authority. No building shall be occupied until the complete surface water drainage system serving that property has been implemented in accordance with the approved surface water drainage scheme.
- 7) No development shall commence on the Sustainable Urban Drainage System (SUDS) until full details of the maintenance and management of the SUDS system, set out in a site-specific maintenance manual, has been submitted to and approved in writing by the Local Planning Authority. The manual shall include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completion the SUDS system shall be operated in accordance with provisions of the manual.
- 8) No development shall commence until details of a system of foul drainage of the site have been submitted to, and approved in writing by the Local Planning Authority. The details shall also include details of all on and off site works which are required to service the development. Thereafter all development shall be undertaken in accordance with the approved details and no occupation of any of the development shall take place until the approved works have been completed. The foul drainage system shall be retained as approved thereafter.
- 9) Prior to the occupation of the dwellings, hereby permitted, cycle storage provision for the development shall be provided in accordance with details to be first submitted to and approved in writing by the Local Planning Authority and such provision shall thereafter be retained for the stated purpose in perpetuity.

- 10) No part of the development hereby permitted shall be first occupied until the vehicle parking and turning spaces have been laid out and constructed (including drives/garages) in accordance with details to be submitted to and approved in writing by the Local Planning Authority. These spaces shall thereafter be retained at all times for their designated purpose.
- 11) No development shall commence until a written scheme of archaeological investigation of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a schedule for the investigation, the recording of findings and subsequent publication of results. Thereafter the scheme shall be undertaken by an appropriately qualified archaeologist in accordance with the approved details, unless any variation is first submitted to and agreed in writing by the Local Planning Authority.
- 12) No development shall commence, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the approved CEMP shall be implemented and adhered to throughout the entire construction period unless any alternative is agreed in writing by the Local Planning Authority. The CEMP shall provide details of the following:
  - (a) the anticipated number, routing, frequency and types of vehicles used during construction;
  - (b) the provision made for the parking of vehicles by contractors, site operatives and visitors;
  - (c) the loading and unloading of plant, materials and waste;
  - (d) the storage of plant and materials used in construction of the development;
  - (e) the erection and maintenance of security hoarding;
  - (f) the provision of road sweepers and/or wheel washing facilities to mitigate the impact of construction upon the public highway;
  - (g) measures to control the emission of dust and dirt during construction, to include, where relevant, sheeting of loads, covering and dampening down of stockpiles;
  - (h) measures to control the emission of noise during construction;
  - (i) details of all proposed external lighting to be used during construction and measures used to limit the disturbance of any lighting required. Lighting shall be used only for security and safety;
  - (j) hours of construction;
  - (k) waste management including prohibiting burning;
  - (l) details of public engagement both prior to and during construction works;
  - (m) details of the methods to ensure the highway network in the vicinity of the site is made good from any damage caused by construction traffic.
- 13) No development shall commence until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any paths, drives, garages and parking areas and the proposed completed height of the development and any retaining walls have been submitted to, and approved in writing by, the Local Planning Authority. The details shall clearly identify the relationship of the proposed ground levels and proposed completed height with adjacent buildings. The development thereafter shall be carried out in accordance with the approved details.

- 14) No part of the development hereby permitted shall be occupied until the requirements of the Travel Plan Statement (Peter Evans Partnership October 2016) have been implemented in accordance with the timescales set out in the Statement.
- 15) No development shall commence until a Bat, Bird and Reptile Mitigation Strategy, including a programme for its implementation, has been submitted to and approved in writing by the Local Planning Authority and resurveying shall accord with best practice. The strategy shall include the details and position of bat and bird boxes within trees. Thereafter the strategy shall be implemented fully in accordance with the approved details.
- 16) No development shall commence until an updated Badger Survey has taken place and the findings of that survey and a mitigation strategy, if so required, has been submitted to, and approved in writing by, the Local Planning Authority. The development thereafter shall be carried out in accordance with the approved details.
- 17) Any works to trees or vegetation clearance on site should only be undertaken outside the bird breeding season (1st March – 1st October). If works to trees or vegetation are required within this time an ecologist shall check the site before any works take place (within 24 hours of any work) and any works shall be in accordance with the ecologist's recommendations.
- 18) No development, including site works of any description, shall take place, nor shall any equipment, machinery or materials be brought onto the site, until all the existing trees or hedges to be retained on the site have been protected by a fence erected around each tree or group of vegetation at a radius from the bole or boles of 5 metres. The details of the fence shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any works. This fencing shall be maintained until all equipment, machinery, surplus materials and soil have been removed from the site. Within the areas so fenced off the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon without the prior written approval of the Local Planning Authority. If any trenches for services are required in the fenced off areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered. All works shall be in accordance with BS 5837:2012.
- 19) Details of any external lighting of the site (excluding domestic security lighting) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the occupation of the development hereby permitted. This information shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed in accordance with the approved details.
- 20) No development shall commence until full details of broadband infrastructure to serve the proposed development have been submitted to and approved in writing by the Local Planning Authority. These details shall demonstrate the provision of suitable infrastructure to facilitate these connections and the protection of existing infrastructure on site during works. The development will thereafter proceed only in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.