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## Appeal Decision

Site visit made on 10 February 2020

**by J Ayres BA Hons, Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 May 2020**

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### **Appeal Ref: W/4000456**

#### **The Cottage, Shripney Road, Bognor Regis PO22 9PA**

- 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 Castle Property Developments against the decision of Arun District Council.
  - The application Ref BE/69/19/OUT, dated 23 May 2019, was refused by notice dated 10 October 2019.
  - The development proposed is Outline planning application with all matters reserved except access for up to 31 No. houses and flats with car parking, landscaping and associated infrastructure & access off Shripney Road (A29), all following the demolition of the existing dwelling & outbuildings.
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### **Decision**

1. The appeal is allowed and planning permission is granted for outline planning application with all matters reserved except access for up to 31 No. houses and flats with car parking, landscaping and associated infrastructure & access off Shripney Road (A29), all following the demolition of the existing dwelling & outbuildings at The Cottage, Shripney Road, Bognor Regis PO22 9PA in accordance with the terms of the application, Ref BE/69/19/OUT, dated 23 May 2019, subject to the conditions in the attached schedule.

### **Application for costs**

2. An application for costs was made by Castle Property Developments against Arun District Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. The description of the application was amended by the council, whilst that description adequately reflects the nature of the proposal I have amended it slightly to make it concise. I am satisfied that this amendment would not prejudice either of the parties.
4. The appeal relates to a scheme for outline permission with access only to be considered at this stage. All other matters have been reserved for determination at a later date. Plans providing details of any of the reserved matters have been treated as illustrative plans for the purposes of my decision.

## **Main Issues**

5. The main issues are;
- (i) Whether the proposed development would be appropriately located, having regard to planning policies that seek to manage the location of housing development;
  - (ii) whether the site would be served by an adequate access;
  - (iii) whether the proposal would provide adequate levels of parking; and
  - (iv) whether the proposal would result in an overdevelopment of the site.

## **Reasons**

### *Location*

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The appeal site is outside of the built up area boundary and development is only permitted in these cases following specific criteria set out in Policy C SP1. The proposal would not meet those criteria and would therefore conflict in principle with Policies C SP1 and SD SP2 of the Arun Local Plan (adopted 2018) (the Local Plan).
7. The Bersted Neighbourhood Development Plan (the Neighbourhood Plan) includes a built-up area boundary drawn around the edge of the larger settlement of Bognor Regis (of which North & South Bersted are a part). There is no separate built up area boundary drawn around the settlement of Shripney. The site lies some distance outside of the built-up area boundary of Bognor Regis and the appeal site, for the purposes of the Neighbourhood Plan, is classified as countryside. Policy ES7 of the Neighbourhood Plan states that development outside of the built-up area boundary will not be supported and as such the proposal would conflict with policy ES7 of the Neighbourhood Plan.
8. Planning permission was granted in 2018 for a total of 20 units on the site (Ref BE/63/17/OUT) (the extant permission). I have limited evidence to suggest that it could not be implemented, and I attach some weight to it. As such I attach weight to the position that, despite the conflict with the Local Plan and Neighbourhood Plan, the principle of development on this site has been established.
9. There are bus stops immediately adjacent to the site providing access to schools and other services, with some food and retail offers available on foot. As such I find that the proposal would encourage alternative forms of transport to the private vehicle. The proposal would provide a moderate contribution to the council's supply of housing land, and an element of affordable housing which are benefits. The increase in residents would provide economic stimuli for the local economy which would also be a benefit of the scheme.
10. I consider that the proposal before me would provide a range of benefits that would outweigh the conflict with the policies in the Local Plan and Neighbourhood Plan. The proposal would comply with Policy D SP1 of the Local Plan which is clear that a positive approach to development should be taken that reflects the presumption in favour of sustainable development.

### *Access*

11. The current access to the site would be stopped up and a replacement 4.8m wide access constructed approximately 30m to the south of the existing. This would provide visibility splays of 71m to the north and 120m to the south. A new footway access would be provided within the central reservation between Shripney Road and the service road to assist people crossing the road.
12. The access was previously accepted for the extant permission, and I have no evidence to lead me to a different conclusion. The uplift of 11 dwellings is estimated to generate an extra 2 two-way vehicle trips in the AM peak hour and 6 in the PM peak hour. Accordingly I do not consider that the proposal for an extra 11 dwellings from the 20 set as a baseline would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network. It would therefore comply with the guidance in the National Planning Policy Framework.
13. I find that the proposal would comply with policy T SP1 of the Local Plan which seeks to ensure development provides safe access on to the highway network; contributes to highway improvements and promotes sustainable transport.

### *Parking*

14. The proposed parking provision would not comply with Policy HDQ8 of the Neighbourhood Plan which requires a minimum of two spaces per dwelling. However, as layout is a reserved matter this could be addressed at a later stage to consider whether additional parking could be achieved.
15. Moreover, the provision would be in accordance with the West Sussex Parking Demand Calculator. As such I find that the site could provide adequate levels of parking in accordance with Policy T SP1 of the Local Plan which advises that development will be supported where it incorporates appropriate levels of parking in line with West Sussex County Council guidance on parking provision.

### *Overdevelopment*

16. Submission of layouts, whether labelled as indicative or not, are commonly utilised to demonstrate to the decision maker that the level of proposed development can be likely be accommodated within the site with final designs requiring submission at reserved matters stage. It is clear, from the evidence before me, that the Council have consistently throughout the application process treated the plans as indicative. The delegated report makes several references the indicative nature of the plans and states that detail of layout, landscaping, scale and appearance have been reserved and are not subject to the outline planning application. I find that the proposed plans, in so far as layout is concerned, should clearly be considered as indicative.
17. The proposal is for up to 31 dwellings, whilst this would introduce a higher density on the site, the built form would reflect the large building on the adjacent site in use as a Premier Inn. The extant permission would allow 20 units on the appeal site. Whilst this proposal would result in an additional level of housing it would not result in a significantly larger footprint than the extant permission. The density would increase, this is reflect in the National Planning Policy Framework which advises that

18. The plans are illustrative only, and an alternative layout could be agreed to accommodate the scheme should that be considered suitable. I am satisfied that the proposed level of accommodation could be facilitated by this large site. The exact layout of the scheme would be agreed at reserved matters stage, it is not before me for determination.
19. In terms of the surrounding landscape, the hedgerow boundaries and existing trees could be included within a scheme to reinforce the natural elements of these boundaries to further reflect the wider landscape, and I am satisfied that the proposed residential development of this site could be achieved without adversely affecting the character of the local townscape or the wider landscape.
20. It is not considered possible to make a detailed assessment of residential amenity at this stage given that layout, scale and appearance are all reserved matters. However, in principle the illustrative plans identify that the development could be located to ensure that adequate levels of privacy and outlook would be provided for future occupiers. Amenity space could be provided through some unit specific space and public open space.
21. I find that the appeal site would be able to accommodate up to 31 dwellings and that the development could be designed and constructed with appropriate levels of landscaping, in a manner that would provide an acceptable standard of amenity for future occupiers and represent an efficient use of land.
22. It would therefore comply with Policies D SP1 and D DM1 of the Local Plan that collectively require proposals to seek efficient use of land but reflect the characteristics of the site and local area.

### **Planning Obligation**

23. A Unilateral Undertaking (UU) under S106 of the Town and Country Planning Act 1990 has been submitted relating to the provision of the contributions and matters set out above. The UU binds the owner to covenants with Arun District Council. During the course of the appeal the Council has adopted the Arun District Council The Community Infrastructure Levy (CIL) Charging Schedule and a number of the contributions secured via the S106 would now be collected as part of the CIL payment.
24. However, the CIL levy does not cover some of the matters dealt with by the S106. The CIL Regulations require that any planning obligation providing for contributions must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
25. Taking each matter in turn, dealing first with affordable housing. In this case the UU would secure 9 of the proposed flats at an affordable rent and this has been agreed by the Councils Housing Strategy and Enabling Officer. There is no doubt that there is a need for affordable housing in the District, and the proposal would make a modest contribution towards it.
26. On site public open space would either be provided and secure through a management plan, or in the event that the open space were to be adopted the UU secures a payment of £13.51 per square metre for future maintenance. I am satisfied that this meets the CIL tests and that monies have not already been collected by the Council for this infrastructure project.

27. I am satisfied that the provisions of the submitted UU would meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests in the Framework in respect of affordable housing and the provision of on site public open space. However, the S106 is not necessary to secure contributions towards the following; education, libraries, healthcare, off site local play and fire and Rescue.

### **Conclusion and Conditions**

28. I have found that the proposal would conflict in principle with regards to its location. However, I have found that there are material considerations that would outweigh this conflict and that the proposal would comply with the development plan in respect of a number of policies. Accordingly I find that the appeal should succeed.

29. The Council have requested conditions which I have considered against the advice contained in the Planning Practice Guidance and amended or omitted where necessary.

30. In addition to the standard time limit conditions for outline permissions I have imposed a condition listing the approved plans as this provides certainty.

31. Conditions relating to construction management and hours are necessary to protect residential amenity and in the interest of highway safety. Conditions relating to Access, road safety, the pedestrian crossing and visibility splays are necessary to ensure that the proposal does not have an adverse effect on highway safety. Conditions relating to the provision and maintenance of a scheme to avoid flooding are necessary to ensure that the site does not risk the increase of flooding on site or elsewhere. Conditions relating to energy efficient schemes and future provisions are necessary to ensure that the site is sustainable in the future. Conditions relating to the identification of and where necessary treatment of contamination is necessary to ensure that such matters are dealt with properly if found. A condition requiring compliance with the Ecological Appraisal is necessary in the interest of protecting ecology. A condition requiring compliance with the acoustic report is necessary to protect the amenity of occupiers. Details of lighting is secured by condition to protect the bio-diversity of the site. Conditions relating to landscaping are necessary to ensure that the development of the site respects the character of the area. A condition relating to housing mix is necessary to ensure that the site provides a mixture of housing types.

32. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*J Ayres*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 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 approved shall be carried out in accordance with the following approved plans :
  - Dwg. 6656-010 Rev E "Site Location Plan";
  - Dwg. 6656-020 Rev B "Site Plan";
  - Dwg. 160818-06 Rev A "Proposed Footway Arrangement";
  - Dwg. 160818-07 Rev B "Site Visibility"; and D
  - wg. 160818-08 Rev B "Pedestrian Crossing Visibility".
- 5) The development must be carried out in accordance with the recommendations and mitigation measures as set out within section 4.0 (pages 36 to 41) of the Preliminary Ecological Appraisal (September 2018) and section 4.0 (pages 11 to 16) of the Bat Activity Surveys Report (June 2017). The enhancements and mitigation measures shall be retained and thereafter maintained as fit for purpose.
- 6) The development shall be carried out in accordance with the "Acoustic Planning Report" dated 4th Sept 2018 (ref 26112-RP-AC-001) by Hilson Moran.
- 7) No construction / demolition activities shall take place, other than between 08:00 to 18:00 hours (Monday to Friday) and 08:00 to 13:00 hours (Saturday) with no work on Sunday or Bank Holidays.
- 8) At least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources (as described in the glossary at Annex 2 of the National Planning Policy Framework). Details and a timetable of how this is to be achieved for each phase or sub phase of development, including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority before any development in that phase or sub phase begins. The development shall be implemented in accordance with the approved details and timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 9) No development excluding the access shall commence until the vehicular access serving the proposed site has been constructed in accordance with the approved planning drawings 6656- 010 Rev E "Site Location Plan" and 6656-020 Rev B "Site Plan".



- 10) Development shall not commence, other than works of site survey and investigation, until such time as plans and details incorporating the recommendations given in the Stage 1 Road Safety Audit and accepted in the Designers Response have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Thereafter, the approved improvements shall be implemented in accordance with the approved details and permanently retained thereafter.
- 11) Development shall not commence, other than works of site survey and investigation, until full details of a proposed foul drainage system shall be submitted to and approved in writing by the Local Planning Authority (including details of its siting, design and subsequent management / maintenance) and no dwelling shall be occupied until works for the disposal of sewage have been fully implemented in accordance with the approved details.
- 12) Development shall not commence, other than works of site survey and investigation, until full details of the proposed surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SuDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and winter Percolation testing to BRE 365, or similar approved, will be required to support the design of any Infiltration drainage. No building / No part of the extended building shall be occupied until the complete surface water drainage system serving the property has been implemented in accordance with the agreed details and the details so agreed shall be maintained in good working order in perpetuity.
- 13) Development shall not commence, other than works of site survey and investigation, until full details of any proposals: to discharge flows to watercourses; or for the culverting, diversion, infilling or obstruction of any watercourse on or adjacent to the site have been submitted to and approved in writing by the Local Planning Authority. Any discharge to a watercourse must be at a rate no greater than the pre-development run-off values. No construction is permitted, which will restrict current and future land owners from undertaking their riparian maintenance responsibilities in respect to any watercourse or culvert on or adjacent to the site.
- 14) Development shall not commence, other than works of site survey and investigation, until full details of the maintenance and management of the surface water drainage system is set out in a site-specific maintenance manual and submitted to, and approved in writing, by the Local Planning Authority. The manual is to include details of financial management and arrangements for the replacement of major components at the end of the manufacturer's recommended design life. Upon completed construction of the surface water drainage system, the owner or management company shall strictly adhere to and implement the recommendations contained within the manual.
- 15) Development shall not commence, other than works of site survey and investigation, until a Construction Environmental Management Plan has been

submitted to and approved in writing by the Local Planning Authority. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,

- a) An indicative programme for carrying out of the works;
  - b) Details of the arrangements for public engagement / consultation both prior to and continued liaison during the construction works;
  - c) Measures to minimise the noise (including vibration) generated by the construction process to include hours of work, proposed method of piling for foundations, the careful selection of plant and machinery and use of noise mitigation barrier(s);
  - d) Details of any floodlighting, including location, height, type and direction of light sources and intensity of illumination;
  - e) The parking of vehicles of site operatives and visitors;
  - f) Loading and unloading of plant and materials, including permitted times for deliveries;
  - g) Storage of plant and materials used in constructing the development;
  - h) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - i) The provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulations Orders);
  - j) Measures to control the emission of dust and dirt during construction;
  - k) A scheme for recycling / disposing of waste resulting from demolition and construction works i.e. no burning permitted.
- 16) Prior to each phase of development approved by this planning permission no development shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
1. A preliminary risk assessment which has identified: - all previous uses - potential contaminants associated with those uses - a conceptual model of the site indicating sources, pathways and receptors - potentially unacceptable risks arising from contamination at the site
  2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
  3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority. The scheme shall



be implemented as approved. Where demolition is required 1. and 2. above should be submitted prior to demolition. Parts 3. and 4. can take place post demolition if necessary.

- 17) No part of the development shall be first occupied until visibility splays of 2.4 metres by 120 metres to the south and 2.4 metres by 71 metres to the north have been provided at the proposed site vehicular access onto Shripney Road, in accordance with the approved planning drawings. Once provided the splays shall thereafter be maintained and kept free of all obstructions over a height of 0.6 metre above adjoining carriageway level.
- 18) Prior to the occupation of any part of the development, full details of any new lighting shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the predictions of both horizontal illuminance across the site & vertical illuminance affecting immediately adjacent receptors, plans of light appliances, the height & position of fitting, illumination levels & light spillage. The lighting scheme shall comply with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Notes for the Reduction of Obtrusive Light" (GN01:2011) Zone E2 and also minimise potential impacts to any bats using the trees, hedgerows and buildings by avoiding unnecessary artificial light spill through the use of directional light sources and shielding. The lighting approved shall be installed and shall be maintained in accordance with the approved details.
- 19) Prior to each phase of development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.
- 20) Prior to the occupation of any part of the development, a strategy for the provision of the highest available headline speed of broadband provision to future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall take into account the timetable for the delivery of 'superfast broadband' (defined as having a headline access speed of 24Mb or more) in the vicinity of the site (to the extent that such information is available). The strategy shall seek to ensure that upon occupation of a dwelling, the provision of the highest available headline speed of broadband service to that dwelling from a site-wide network is in place and provided as part of the initial highway works and in the construction of frontage thresholds to dwellings that abut the highway. Unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a broadband service for the majority of potential customers will no longer necessitate below ground infrastructure, the development of the site will continue in accordance with the approved strategy.
- 21) Prior to the occupation of the dwellings, a scheme for the provision of facilities to enable the charging of electric vehicles to serve the approved dwellings shall be submitted to the local planning authority for approval and thereafter implemented in accordance with the approved details and the

charge points shall thereafter be permanently retained and maintained in good working condition.

- 22) No part of the development shall be first occupied until such time as the pedestrian access footways/crossing points on Shripney Road serving the development have been constructed in accordance with plans and details submitted to and approved in writing by the Local Planning Authority, in consultation with the Local Highway Authority.
- 23) Immediately following implementation of the approved surface water drainage system and prior to occupation of any part of the development, the developer/applicant shall provide the local planning authority with as-built drawings of the implemented scheme together with a completion report prepared by an independent engineer that confirms that the scheme was built in accordance with the approved drawing/s and is fit for purpose. The scheme shall thereafter be maintained in perpetuity.
- 24) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.
- 25) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details.
- 26) A scheme for managing any borehole installed for the investigation of soils, groundwater or geotechnical purposes shall be submitted to and approved in writing by the local planning authority. The scheme shall provide details of how redundant boreholes are to be decommissioned and how any boreholes that need to be retained, post-development, for monitoring purposes will be secured, protected and inspected. The scheme as approved shall be implemented prior to the occupation of each phase of development.
- 27) The reserved matters scheme shall include a housing mix which sets out a range of range of house types and tenures and is specific to Bersted. The scheme shall demonstrate how the development addresses the needs of current and future households in the Bersted area. The scheme shall also provide a proportion of homes to meet Lifetime Home standards (or the equivalent current standard).
- 28) The landscape details referred to in Condition 1 shall include details of all existing trees and hedgerows on the land indicating which are to be retained and which removed. Development shall be carried out in accordance with the approved details. No hedge or tree shall be felled, uprooted or otherwise removed before, during or after the construction period except where removal is indicated on a plan approved by the local planning authority.
- 29) The landscape details referred to in Condition 1 shall include full details of the position, design, materials, height and type of boundary treatments to be provided. The boundary treatments shall be provided to each dwelling

before the dwelling is occupied or in accordance with the approved phasing plan. Development shall be carried out in accordance with the approved details and permanently retained in a useable condition thereafter.

- 30) The landscape details referred to in Condition 1 shall include a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas other than privately owned domestic gardens. The landscape management plan shall be implemented in accordance with the approved details.

**END OF SCHEDULE**