



The Planning Inspectorate

APP/U1430/W/22/3304805 - Land at Fryatts Way, Bexhill

10:00 – Wednesday 12 October 2022

Outline planning application for up to 210 residential dwellings (including up to 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation, vehicular access point and associated ancillary works. All matters to be reserved with the exception of the main site access.

CASE MANAGEMENT CONFERENCE SUMMARY NOTE

Introduction

1. This note summarises the discussion from the Case Management Conference (CMC) held on Wednesday 12 October 2022.
2. The case management conference (CMC) was led by Graham Chamberlain BA MSc MRTPI, the appointed Inspector.
3. The purpose of the CMC was to set out matters relating to the ongoing management of the appeal and the presentation of evidence, so that the Inquiry is conducted in an efficient and effective manner.
4. There was no discussion on the merits of the case at the CMC and no evidence was heard.
5. It is requested that this note is placed on the Council's website, so it is available for interested parties to see.

Sitting Dates and Location

6. The Inquiry is scheduled to open at 10:00 on 29 November 2022. It will resume on subsequent days at 09:30.
7. It will be an in-person event held in the Council Chamber, Town Hall, London Road, Bexhill-on-Sea TN39 3JX.
8. It is currently programmed to sit until early/mid-afternoon on the 2 December 2022.
9. It was agreed to programme the 13 and 14 December 2022 as reserve days.
10. It will become clearer at the Inquiry whether it will be necessary to use these additional days.
11. It may be that only one day is necessary and that it is used to discuss conditions, planning obligations, questions relating to any habitat regulations assessment and closings. If that is the case, then the session would be run virtually.
12. If the reserve days are used, then the Council will need to host the Inquiry, be it in person or virtually.

Main Issues

13. After discussions at the CMC, and based on the submissions currently before me, the main issues (MI) are considered to be as follows:
 1. *Whether the appeal site is an appropriate location for the proposed development, with reference to the spatial strategy in the development plan;*
 2. *Whether the appeal site is an appropriate location for the proposed development, with reference to the accessibility of services and facilities;*
 3. *The effect of the proposed development on the character and appearance of the area;*
 4. *The effect of the proposed development on the safety and operational efficiency of the strategic road network, with reference to the A259;*
 5. *The effect on the living conditions of the occupants of 11 and 15 Fryatts Way, with reference to noise and disturbance.*
 6. *The effect of the proposal on the Pevensy Levels SAC and Ramsar site;*
 7. *Whether the proposed development would make adequate provision for affordable housing, public open space, drainage infrastructure, off site highway works, a modal shift in/improvement to pedestrian connectivity, employment and skills and s106 monitoring.*
 8. *If there is a conflict with the development plan, whether other considerations indicate the proposal should be determined otherwise than in accordance with the development plan.*
14. The Council confirmed that due to the outline nature of the proposal, the absence of additional bat roost surveys is not currently a concern and should not be considered as a MI.
15. The Council and appellant are hoping to reach common ground on the MI6 and MI7 through conditions and/or a planning obligation.
16. The appellant is also hoping to address MI4 and MI5 before the Inquiry opens through the submission of extra information/surveys. However, at this stage they are still matters in dispute and therefore included as main issues.
17. Although separate main issues, it is likely that evidence on MI1 and MI8 will be addressed together.
18. The Inquiry will also look at other matters raised by consultees and interested parties. The parties hope to address this primarily through a Statement of Common Ground (SOCG) or within their proofs.
19. It is essential that both the Council and appellant continue to effectively communicate with one another to seek to narrow the issues for consideration at the Inquiry.

Main Issue 4 and National Highways

20. I understand that MI4 is predicated on comments submitted by National Highways. That said, it is the Council, as the Local Planning Authority, who have issued the putative reason for refusal. As a result, the Council will be responsible for presenting a case in respect of this point.

21. The Council will therefore contact National Highways to ascertain whether they will be providing a proof and attending the Inquiry as a witness. It would seem to me highly relevant that they do.
22. The parties, especially the Council, will need to consider how this matter will be addressed at the Inquiry if National Highways do not attend.
23. It is likely that I/the appellant will have questions for National Highways, or the Council in their absence.

Dealing with the Evidence

24. The following matters will be addressed through the formal presentation of cases with opportunities for cross and re-examination.
 - The accessibility of services and facilities (MI2)
 - The effect of the proposal on the character and appearance of the area (MI3)
 - The effect of the proposed development on the safety and operational efficiency of the strategic road network (MI4)
 - The effect on the living conditions of the occupants of 11 and 15 Fryatts Way, with reference to noise and disturbance (MI5).
 - 'Planning matters' - The appropriateness of the location with reference to the spatial strategy in the development plan, other considerations that may indicate the proposal should be determined otherwise than in accordance with the development plan (MI1 and MI8) and any points raised by interested parties not already covered.
25. At this stage, I am anticipating dealing with MI6 and MI7 as a round table discussion. Similarly, it may be possible to deal with MI4 and MI5 as round table discussions if the points between the parties are very narrow. This will become apparent once the Proofs, SOCG and any rebuttals are submitted.

Running Order

26. The Inquiry will begin with my opening comments.
27. I will then invite opening statements to set the scene (up to 15 minutes), from the appellant followed by the Council.
28. We will then go topic by topic (following the order set out in Paragraph 24 above). The Council first, followed by the appellant in respect of each topic.
29. Each witness will be able to present their evidence in chief. I will have read the Proofs, so this need not be especially detailed.
30. There will then be an opportunity for cross examination by the other party.
31. Following this, there may be questions or submissions from interested parties that take a contrary view to the witness.
32. There will then be an opportunity for re-examination by the witnesses' advocate.
33. I may hear from interested parties after the openings if they wish to speak but can only attend the first day/morning. My preference, however, will be for interested parties to engage during the relevant topics in order to avoid repetition.

34. Once I have heard evidence on the main issues listed in Paragraph 24 above, I will lead the usual round table sessions on conditions, the planning obligation and any matters relating to a habitat regulations assessment.
35. There will then be an opportunity for closing submissions. The Council first, then the appellant (copies in writing to be provided please).
36. The closing should ideally be no longer than 30 minutes and should simply set out the respective cases as they stand at the end of the Inquiry and should be fully cross referenced.
37. I will endeavour to circulate a draft timetable setting out the running order before the Inquiry opens. I will do this once I have final time estimates from the advocates.
38. Other than in exceptional circumstances, the advocates are expected to take no longer than the timings indicated. This will require the cooperation of both advocates and witnesses.

Conditions, Planning Obligation and Costs

39. An agreed schedule of suggested planning conditions, and the reasons for them, must be submitted at the same time as the proofs if not before. Ideally, they will be included in the SOCG and presented in Microsoft Word.
40. The Council should take the lead on preparing the list, in discussion with the appellant.
41. The Council and appellant will need to pay careful attention to the wording, and the conditions will need to be properly justified having regard to the tests for conditions in the National Planning Policy Framework.
42. Any difference of opinion relating to the suggested conditions, including alternative wording, should be highlighted in the schedule with a brief explanation given.
43. The Council must provide a 'Justification Statement' for each of the obligations it is seeking, ideally in the form of a table.
44. This should explain why each of the obligations it is seeking is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.
45. This could be appended to the SOCG if agreed.
46. It should be submitted by the 8 November, or by the 18 November at the latest.
47. It would be helpful if I am presented with an early draft of the planning obligation as soon as possible, with a final draft to be submitted 10 days before the Inquiry opens.
48. I will subsequently need to be provided with a certified copy of the final draft.
49. A short time will be allowed after the Inquiry for the submission of a signed and executed version. At this stage, I am anticipating this being one week.
50. Neither the Council nor appellant indicated at this stage that they intend to make an application for an award of costs.
51. The Planning Practice Guide is clear that it is good practice to submit applications in writing before the Inquiry opens.

Content of the Statement of Common Ground

52. A signed Statement of Common ground was not submitted with the Council's Statement of Case as required by the rules. However, a draft is currently being circulated and should be submitted by the 8 November 2022.

53. It was agreed that the SOCG will include the following:
- A list of the drawings and documents considered by the Council at the application stage.
 - A list of any new drawings and documents submitted with the appeal.
 - A list of any new evidence submitted to the appeal by the Council.
 - A list of suggested planning conditions.
 - A justification statement for any planning obligations ideally in the format of a table.
 - A planning policy update outlining any changes since the Council issued its decision.
 - A list of the main matters agreed and not agree.
 - The Council's five-year housing land supply position, in so far as it can be agreed.

Core Documents and Inquiry Documents

54. The Council and appellant will need to discuss and agree a list of core documents in advance of preparing the proofs. This is so they can be properly referenced in the proofs.
55. That list is to be co-ordinated by the appellant and must be submitted with the proofs.
56. Please find attached at Annex 1 a template for the list.
57. The Core Documents should comprise only those documents to which you will be referring to.
58. Only relevant development plan policies should be included.
59. A copy of the National Planning Policy Framework does not need to be included.
60. Any Appeal Decisions and/or legal authorities that are included will each need to be prefaced with a note explaining the relevance of the document to the issues arising in the Inquiry, together with the propositions on which you are seeking to rely, with the relevant paragraphs flagged up.
61. The Core Document list can be electric, but it is important that Interested Parties have access to them. Therefore, they should be uploaded onto the Council's website.
62. My preference is for the Core Documents to be separate PDFs, although I am content for them to be collated in Drop Box as a fall back.
63. Any documents submitted once the Inquiry has opened will be recorded as 'Inquiry Documents' on a separate list overseen by me.
64. A minimum of two copies of any new documents produced at the Inquiry will be required, one for the other main party and one for me. Extra copies may also be necessary for interested parties.

Timetable for submission of documents

65. At the appellant's request, I am content to extend the deadline for the proofs by one week so that further survey work can be undertaken and referred to. This is because doing so may save time at the Inquiry.
66. However, I am aware that in the interests of fairness, the Council may wish to submit a rebuttal, or provide an update, in response to these submissions. Such an approach would also enable time for National Highways to review the additional survey work.
67. As a result, the timetable for additional documents is as follows;

8 November 2022	<p>Signed Statement of Common Ground</p> <p>Suggested conditions (Council to lead)</p> <p>Justification statement for any planning obligations (Council to provide)</p> <p>Proofs of Evidence</p> <p>Core Documents List (appellant to lead)</p> <p>Early draft of the Planning Obligation</p>
18 November	<p>Any rebuttal or updates pertaining to additional surveys</p> <p>Final time estimates (from advocates)</p> <p>Final draft of the Planning Obligation</p> <p>Copy of the Inquiry notification letter and list of those notified (to be supplied by the Council)</p> <p>Preliminary suggested route for my site visit (from appellant and Council)</p>
29 November	Inquiry opens
One week after the Inquiry closes	Certificated copy of the final planning obligation

Housekeeping

68. The Council confirmed the following arrangements
- A. Documents and material can be left over night in the Council Chamber,
 - B. There will be an audio system.
 - C. There will be hearing loops.
 - D. The Council will provide technical/IT support.
 - E. There will be photocopying facilities.
 - F. Interested parties will be able to join/observe virtually.
 - G. There will be WIFI.
 - H. A parking space will be reserved for me for each day.
 - I. A member of staff will be on hand to meet me at around 9am on the first day of the Inquiry to address any questions I have about arrangements¹.

¹ Please refer to these documents for further guidance on the room layout

Other Matters

69. It would be helpful if the Council and appellant could double check whether all relevant interested parties have been correctly notified of the appeal/Inquiry.
70. The Council will send PINS a copy of the letter notifying parties of the date, time and venue of the Inquiry by the 18 November 2022.
71. Please send me as soon as possible a list of the names and job title of the witnesses, how they would like to be addressed during proceedings (e.g. Ms, Mrs, Miss, Dr etc...) and any qualifications they would like recorded.
72. The advocates were confirmed as Mr Martin Carter, of counsel, for the appellant, and Mr Yaaser Vanderman, of counsel, for the Local Authority.
73. There will be no general attendance list circulated at the Inquiry. However, I will ask those appearing to fill in an attendance form if I do not already have their details.
74. It was confirmed that the Local Highway Authority would present evidence as part of the Council's case.
75. At this stage, I am minded to visit the site on an 'Access Required' basis. This is where I visit the site alone and the appellant arranges access. I will keep this under review. I would be grateful if the parties could provide a route/itinerary of what they would like me to view. At this stage I am aiming to visit the site on the Friday afternoon (2 December 2022).
76. The Council confirmed that its first putative reason for refusal contained a typo, in that it refers to Paragraph 170 of the Framework instead of Paragraph 174.

Graham Chamberlain
INSPECTOR

13 October 2022

- <https://www.gov.uk/government/publications/setting-up-a-venue-for-a-public-inquiry-hearing-or-examination/public-inquiries-hearings-and-examinations-venue-and-facilities-requirements>
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989247/Suggested_layout_of_a_room.JPG

ANNEX A – EXAMPLE TEMPLATE FOR CORE DOCUMENTS LIST

(adapt headings to suit)

CD1 Application Documents and Plans

1.1

1.2 etc

CD2 Additional/Amended Reports and/or Plans submitted after validation

2.1

2.2

CD3 Committee Report and Decision Notice

3.1 Officer's Report and minute of committee meeting

3.2 Decision Notice

CD4 The Development Plan

4.1

4.2

CD5 Emerging Development Plan

5.1

5.2

CD6 Relevant Appeal Decisions*

6.1

6.2

CD7 Relevant Judgements*

7.1

7.2

CD8 Other

8.1

8.2

Any Appeal Decisions on which a party intends to rely must each be prefaced with a note explaining the relevance of the Decision to the issues arising in the current Inquiry case, together with the propositions relied on, with the relevant paragraphs flagged up. A similar approach is to be taken in relation to any legal citations relied upon.