

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78

TOWN AND COUNTRY PLANNING APPEALS (DETERMINATION BY INSPECTORS) (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000

APPEAL by Gladman Developments Ltd. against the non-determination by Rother District Council of an 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 mitigation, vehicular access point and associated ancillary works at Land off Fryatts Way, Bexhill. All matters to be reserved with the exception of the main site access.

Planning Inspectorate Reference : APP/U1430/W/22/3304805

Rother District Council Reference : RR/2021/1656/P

1.0 Background

1.1 This Statement addresses the planning obligations sought by the Council in association with the appeal scheme and is provided without prejudice to the Council's case that the appeal should be dismissed and without prejudice to the Council's disagreement in respect of certain elements of first draft of the Section 106 agreement provided by the Appellant.

1.2 Paragraph 57 of the National Planning Policy Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2011 (as amended) set tests in respect of planning obligations. Obligations should only be sought where they meet the following tests:

- 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.

1.3 Rother District Council is a ‘charging authority’ for the purposes of the Regulations and has adopted a CIL charging schedule¹. This Statement considers the evidence needed to enable the Inspector to assess whether the contributions provided through the planning obligations entered into through the draft S106 undertaking by the developer are justified in accordance with those provisions.

2.0 Policies

2.1 The Rother Local Plan Core Strategy (Core Strategy) was adopted in October 2014 and the Rother Development and Site Allocations Local Plan (DaSA) was adopted in December 2019. The National Planning Policy Framework (2021) (NPPF) is also a material consideration.

2.2 The following policies are referred to in support of the case that the proposed planning obligations meet the CIL tests:

CORE STRATEGY
Policy SRM2: Water Supply and Wastewater Management – requires the promotion of sustainable drainage systems to control the quantity and rate of run-off as well as to improve water quality wherever practicable, and specifically for all development that creates impermeable surfaces within the hydrological catchment of the Pevensey Levels.
Policy LHN1: Achieving Mixed and Balanced Communities – states that in relation to affordable housing contribute to an overall balance of 65% social/affordable rented and 35% intermediate affordable housing,
Policy LHN2: Affordable Housing -sets out the Council’s policy on the delivery of affordable housing to meet local needs. The proposed development is above the defined policy thresholds which trigger the provision of affordable housing. This is consistent with paragraphs 63 and 65 of the NPPF.

¹ https://www.rother.gov.uk/wp-content/uploads/2020/01/Adopted_CIL_Charging_Schedule.pdf.

Policy EN5: Biodiversity and Green Space – biodiversity, geodiversity and green space will be protected and enhanced.

Policy EN6: Flood Risk Management – sets out the Council’s requirements for the management of flood risk, including flood protection measures to have full regard to sensitive areas within Ramsar, SAC and SSSI designation. This is consistent with paragraph 169 of the NPPF.

Policy TR2: Integrated Transport – seeks, inter alia, to achieve improvements to the provision and use of sustainable transport by maximising the best and most effective use of existing transport network; facilitating improvements to public transport network; facilitating improvements to public transport networks and improving the pedestrian environment. This is consistent with paragraphs 104 and 110 of the NPPF.

Policy TR3: Access and New Development – requires new development has adequate safe access arrangements. Paragraph 110 of the NPPF requires development to provide safe and suitable access for all people.

Policy EC1: Fostering Economic Activity and Growth – seeks investment in education, training and development, especially in areas of lower attainment levels and skills levels.

Policy CO3: Improving Sports and Recreation Provision – seeks to achieve sufficient, well-managed and accessible open spaces.

Policy IM2: Implementation and Infrastructure – states that where new or improved infrastructure is needed to support development, appropriate provision will be required. This will be secured by planning obligations or condition attached to a consent or by any other appropriate mechanism.

DEVELOPMENT AND SITE ALLOCATIONS LOCAL PLAN

Policy DHG1: Affordable Housing – specifies that the Council will expect 30% on-site affordable housing on scheme of 15 or more dwelling.

Policy DHG6: Self-build and Custom Housebuilding – sets out that on sites of 20 or more dwellings, provision for 5-10% of the total number of dwellings to be provided should be made available as serviced plots for self and custom housebuilders.

Policy DEN5: Sustainable Drainage – requires applicants to demonstrate

that arrangements are in place for ongoing maintenance of SuDS over the lifetime of the development. Paragraph 169 of the NPPF.

3.0 Proposed planning obligations

3.1 The obligations as set out in Section 106 agreement relate to the provision of the following:

Schedule 2

Open space transfer and works

Provisions relating to the provision of open space and its ongoing management and maintenance. It is acknowledged at this stage, there is limited detail on the position, layout and overall suitability of the open space but these provisions would secure its delivery.

Affordable housing

The need for affordable housing in the District is identified in the Core Strategy and Development and Site Allocations Local Plan. 30% of the dwellings in the appeal scheme would be required for affordable housing under the adopted policy. The scheme is for up to 210 dwellings, and therefore, it is noted that the precise number of affordable housing units can not be established until the actual number of proposed dwellings is known.

Self-build and custom-build plots

5-10% of the total number of dwellings to be provided should be serviced plots for self and custom housebuilders as required by policy DHG6 of the Development and Site Allocations Local Plan.

First homes

The provisions indicate that 25% of the affordable housing will be First Homes as set out in the Planning Practice Guidance.

Schedule 3

Car club

Provision of a car club for a period of 3 years from the date of first operation.

Sustainable Transport contribution

A contribution of £300,00 towards the cost of a Demand Responsive Transport Service in the area. This is payable to the County Council.

3.2 As indicated in the Council's Statement of Case, planning obligations would also be expected in respect of the following:

- Provision for the managements and maintenance for the lifetime of the development of the SUDs feature by a specialist water company to protect the integrity of the Ramsar/SAC and SSSI in perpetuity.
- Off-site highway works (including the provision of a new access into the site off Fryatts Way and provision of dropped kerbs and tactile paving) as identified by ESCC in their consultation response date 26 October 2022. Other financial contributions sought by ESCC in that response included a sum of £5,000 towards a Traffic Regulation Order if parking restrictions on Fryatts Way are required and a travel plan and associated auditing fee of £6,000.
- Employment & Skills Plan to support delivery of employment and acquisition of local skill opportunities along with a monitoring fee of £25,000.

4.0 CIL Tests

- 4.1 The following table explains how the planning obligations comply with the three tests set out in paragraph 57 of the NPPF and in CIL Regulation 122.

Planning obligation	Test 1 – Necessity	Test 2 – Directly related to the proposed development	Test 3 – Fair & Reasonable in terms of scale and kind
Open space	The provision and management of the proposed open space are required in order to make the development acceptable in planning terms in accordance with Core Strategy Policy EN5.	The land concerned is located within the site.	The size of the area to be provided and managed is proportionate in scale and kind to the development.
Affordable housing – on site	The provision of affordable housing is required for the proposal to comply with Core Strategy policy LHN2 and DaSA policy DHG1 and paragraphs 63 and 65 of the NPPF. Without a planning obligation securing the provision and mix of affordable housing the proposal would fail to meet the housing needs of the district.	The provision of 30% of dwellings on site as Affordable Housing means the obligation is directly related to the proposed development.	The level of affordable housing required is set out in policy LHN2 of the Core Strategy and DHG1 of the DaSA (namely 30%).
Self-build and custom house	5-10% of the total number of dwellings to be provided should be	As the proposal involves more than 20 homes then policy DHG6 and the provision of self-build	Paragraph 4.64 of the supporting text of policy DHG6 sets out that to ensure

building	serviced plots for self and custom housebuilders are set out in policy DHG6 of the DaSA	and custom house building is relevant.	serviced plots identified for self-build are delivered, their provisions will be secured by a legal agreement associated with any planning permission.
First Homes	25% of the affordable homes would be First Homes, which is in line with national guidance (Planning Practice Guidance, Paragraph:012 Reference ID: 70-012-20210524).	The proposed First Homes are directly relevant to the proposal and in line with paragraph 62 of the NPPF.	The level of First Homes is in line with national guidance, including Planning Practice Guidance (Paragraph: 014, Reference ID: 70-014-202010524).
Sustainable Drainage Systems	The site falls within the Pevensey Levels Hydrological Catchment Area and so drains to the Pevensey Levels SAC/Ramsar and SSSI. Without mitigation the development has the potential to cause harm to the integrity of the European site.	The sustainable drainage works and specialist management in perpetuity are directly related to the development and would be in line with Core Strategy policy EN6 and policy DEN5 of the DaSA and paragraph 169 of the NPPF	The works and maintenance sought are proportionate in scale and kind to the development proposed.
Highway works and sustainable transport contributions	The extent of the highway works and contributions arise directly from : a) the need to provide a safe vehicular access to the site, b) the need to provide safe and inclusive	The works and contributions arise directly as a result of the proposed development.	The works and contributions are proportionate in scale and kind to the development proposed.

	pedestrian access to the site and connections with public transport nodes and c) the need of provide sustainable means of transport.		
Travel Plan and audit contribution	All new residential development of more than 50 units is required to be subject to a Travel Plan. The purpose of a Travel Plan is to promote the most sustainable forms of transport and to reduce demand for less sustainable forms of transport.	The need for a Travel Plan is directly related to the scale of the development and in line with policies TR2 and TR3 of the Core Strategy. The audit fee is required to ensure ongoing monitoring as this falls outside the statutory duties of ESCC.	The measures required will be proportionate and related to the scale and nature of the development sought.
Employment & Skills Plan and monitoring contribution	The provision of a Local Employment and Skills Plan(LESP) and its monitoring to ensure that the community is involved in the proposed development, in line with Core Strategy Policy LHN1.	This LESP is directly related to the proposal and will set out the employment and training opportunities for the communities surrounding the proposed development.	The LESP and monitoring contribution are proportionate in scale and kind to the development proposed.

