

Appeal by Gladman Developments Ltd

Land off Fryatts Way, Bexhill

Against the Non-Determination by Rother District Council of:

“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.”

LPA Ref: RR/2021/1656/P

Statement of Case



August 2022

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1 INTRODUCTION

1.1 Context

1.1.1 This Statement of Case ('SoC') is submitted by Gladman ('the Appellant') and it relates to an appeal against Rother District Council's ('RDC' or 'the Council') non-determination of the outline application RR/2021/1656/P:

“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.”

1.1.2 The Appellant considers a public inquiry is the most appropriate forum in which to test the appeal proposal. A justification for this request is provided in accordance with Annexe K of the Planning Inspectorate’s Procedural Guide¹, as set out below.

1.1.3 This statement should be read alongside the submitted draft Statement of Common Ground (SoCG).

1.2 The Appeal Site and Surroundings

1.2.1 The site comprising 11.29ha of agricultural land, lies adjacent to the existing built form on the north-western edge of Bexhill on Sea, Rother, East Sussex. The settlement of Bexhill is situated approximately 8km west of Hastings and 19km east of Eastbourne.

1.2.2 The site comprises three irregularly shaped fields currently in agricultural use, is well related to the settlement and well-contained by physical features, such as established hedgerows, at its urban edge.

1.2.3 The site is adjacent to Highwoods Golf Club and Broad Oak Park recreational area, which are located directly north-west and south-west of the site respectively. Residential development lies directly to the east of the site off Fryatts Way and Concorde Close.

¹ <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>. Last updated 12 April 2022.

- 1.2.4 A full description of the appeal site and surroundings is set out in the draft SoCG for agreement with the Council.

1.3 Background to the Appeal

- 1.3.1 Prior to the submission of the planning application, a pre-application meeting was held with RDC's officers on 23rd April 2020, in order to understand the Council's initial views on the development proposals.
- 1.3.2 The appellant also undertook a public consultation exercise prior to the formal submission of its application. The process of engagement allowed the appellant to consider the concerns and suggestions of interested parties in formulating its proposals. Full details of the public consultation exercise are set out in the Appellant's Statement of Community Involvement [CD1.20].
- 1.3.3 The planning application was validated by Rother District Council on 1st July 2021. The application was supported by a comprehensive suite of technical reports [CD1.01 – CD1.21] in accordance with the Council's planning application validation requirements, which are set out in the Planning Statement that accompanied the application [CD1.04].
- 1.3.4 Planning law requires that applications for planning permissions be determined in accordance with the development plan unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible and within statutory timescales, unless a longer period has been agreed by the applicant in writing.
- 1.3.5 In this context, the original statutory 13-week period for determining the Appellant's application expired on 30th September 2021, after which point the Appellant and the Council agreed several formal extensions of time ('EoT') for the determination of the application. The most recent EoT agreed by both parties expired on 30th May 2022. Despite several extensions of time, the Council failed to determine the application and, accordingly, this appeal is made against non-determination.
- 1.3.6 Throughout the application process, the appellant used all reasonable endeavours to work with the Council to address concerns raised by statutory consultees, as summarised in the table below. However, no further comments have been received from consultees in respect of impacts on designated sites, landscape or locational sustainability.

Consultee	Consultee Response CD Ref.	Gladman Response CD Ref.
National Highways	CD3.05, CD3.09, CD3.10, CD3.11	CD2.03, CD2.06
ESCC Highways	CD3.06	CD2.04, CD2.08
ESCC Landscape	CD.07	CD.2.05
Natural England	CD3.08	CD2.01, CD2.02

1.3.7 As this is an appeal against non-determination and the planning application has not been reported to RDC's Planning Committee to establish any putative reasons for refusal, the Council's case for the appeal is not yet known. Notwithstanding this, the Appellant's response to the anticipated position of the Council is set out in Section 4 of this SoC.

1.4 Justification for an Inquiry

1.4.1 With reference to Annexe K of the Planning Inspectorate's 'Procedural Guide for Planning Appeals – England' (April 2022), the Appellant requests a public inquiry for the following reasons:

Need for the evidence to be tested through formal questioning by an advocate

1.4.2 Matters in relation to principle of development and landscape are anticipated to be contested between the Council and the Appellant. An advocate will be needed to explore these matters in detail. Emerging case law in relation to the interpretation of national policy means detailed legal submissions may be necessary.

1.4.3 In addition, the appellant is currently unclear on the Council's position in respect of highways (both strategic and local) and sustainability and, unless and until these matters are resolved, is anticipated that these will be issues for the appeal that will also necessitate detailed exploration by advocates.

1.4.4 As set out within Section 3.2 of this statement, the appellant also reserves the right to adduce evidence in respect of five-year housing land supply should the LPA's position materially change prior to the opening of an inquiry.

Complexity of issues

1.4.5 The above topic issues are complex in nature and will require evidence to be adduced by expert witnesses. As such, it is the view of the Appellant that these matters will require cross examination to establish the extent of the evidence which underpins the Council's claims.

1.4.6 Given the Council's comments on landscape it is considered that this will be central to the inquiry process. It is expected therefore that the Appellant and the Council will use expert witnesses to advance its case in respect of concerns regarding landscape impact.

1.4.7 During the application process, the council has raised sustainability of the location as a concern. The appellant has sought to clarify that the location is sustainable and how additional measures are proposed as part of the application process to improve the connectivity for new and existing residents. There is a chance depending on the LPA case that the Appellant and the Council will use expert witnesses to advance its case in respect of this.

1.4.8 Cross examination is necessary for these reasons.

Significant local interest

1.4.9 There is significant local interest in the scheme and a large number of objections were submitted to the local planning authority during consultation on the planning application.

1.4.10 A public inquiry will allow for members of the public to be heard. It is considered that a public inquiry is the most efficient way to deal with the matters raised by local residents, particularly if a 'Rule 6' party is formed.

1.4.11 Furthermore, Bexhill Town Council was formed in September 2021 and they may wish to partake in the process.

1.4.12 Public interest in the appeal will also impact on the likely length of the appeal proceedings, as discussed below.

Likely length of inquiry

1.4.13 It considered that to address all matters, **up to 5 sitting days** will be required. This exceeds the single day usually reserved for a hearing (or even a two-day hearing, which are understood to be used only in exceptional circumstances). The Annexe therefore suggests that a public inquiry is necessary.

2 THE DEVELOPMENT PLAN

2.1 Development Plan

2.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise. Section 39 of the Act requires decision makers to exercise their functions with the objective of contributing to the achievement of sustainable development. The Appellant will adduce evidence to demonstrate that important material considerations exist which limit the weight that can be afforded to parts of the development plan and that allowing the appeal is wholly appropriate and justified.

2.1.2 The adopted development plan, as applicable to the determination of the appeal application, consists of:

- Rother Local Plan Core Strategy (2014); and
- Rother Development and Site Allocations (DaSA Local Plan).

2.1.3 A list of the planning policies relevant to the appeal proposal is enclosed in the submitted Statement of Common Ground for agreement with the Council.

2.1.4 The appellant considers that there are no relevant saved policies of the Rother Local Plan (2006) applicable to this appeal.

2.1.5 The appellant's evidence will include a detailed analysis of the appeal proposals against the relevant policies of the development plan.

2.2 Weight to be Afforded to the Development Plan

2.2.1 The Appellant will adduce evidence setting out its position on the weight that can be given to policies of the development plan and any conflict with them, with reference to paragraphs 11 and 219 of the NPPF and other relevant material considerations.

2.2.2 Contrary to the NPPF, the relevant policies of the Rother Core Strategy (2014) and DaSA Local Plan (2019) fail to plan for a level of housing based on current housing need of the district.

2.2.3 As RDC cannot demonstrate a five-year supply of housing land, in accordance with paragraph 73 of the Framework, the most important policies for the determination of the application,

should not be considered up to date² and, consequently, the proposals fall to be determined in accordance with the 'tilted balance' contained within paragraph 11(d) of the NPPF. The appellant will adduce evidence to demonstrate that the extent of the housing shortfall and housing land supply situation is an important material consideration in the conclusion of this case.

2.2.4 The proposals are considered to comply with the remainder of relevant, up-to-date development plan policies.

2.3 Principle of Development

2.3.1 As the appeal site is not an allocated site and lies outside of the Bexhill development boundary, it is accepted that the appeal proposals conflict with Policy OSS2 from the RLPCS and Policy DIM2 from the DaSA Local Plan.

2.3.2 However, evidence will be adduced to demonstrate that this conflict should only be given limited weight in the overall planning balance in this case and considering the Council's five-year housing land supply position. It will be shown that the location of the site outside of the Bexhill administrative boundary but immediately adjacent to existing built form cannot be a reason in principle for resisting the development.

2.3.3 The Appellant will show that the appeal proposals are generally compliant with all relevant development plan policies that can be considered up to date for the purposes of decision-making and would represent a logical and sustainable extension to the existing urban area and in which to locate further residential development of the nature proposed.

² NPPF footnote 8.

3 OTHER MATERIAL CONSIDERATIONS

3.1 National Planning Policy Framework

3.1.1 In terms of the Framework, paragraph 2 states that the NPPF is a material consideration in planning decisions. Paragraph 60 references the government's objective of significantly boosting the supply of homes. The appellant will adduce evidence to demonstrate that the appeal proposal responds to this national policy ambition and represents sustainable development.

3.1.2 The Appellant will demonstrate that, having regard to the proper application of the Framework, the following can be said of the appeal proposals.

Sustainable Development

An economic objective

3.1.3 Evidence will be adduced to demonstrate the beneficial economic impacts of the appeal proposal. The delivery of new market and affordable homes now in Bexhill will enable Rother District to promote and sustain a strong, responsive and competitive economy.

A social objective

3.1.4 It will be demonstrated that the appeal proposals will deliver new homes of the right type and mix, in the right place and at the right time to meet market and affordable housing needs and support Bexhill's growth aspirations., including:

- The delivery of up to 210 homes to meet a pressing local need in the context of a five-year housing land supply deficit and the national policy imperative to significantly boost the supply of housing; and
- The delivery of up to 63 affordable homes (30% of the total number of dwellings) in a district where affordability is declining and there is a considerable need for affordable homes.

3.1.5 Without a sufficient supply of new homes, the Council cannot meet the needs of present or future generations.

3.1.6 The provision of a significant amount of formal and informal public open space on the site, including a locally equipped area of play, is a further social benefit of the proposals.

- 3.1.7 It will be demonstrated that the site is located in an accessible and sustainable location close to key services and facilities, and the wider area, which will help support the health, social and cultural wellbeing of Bexhill and Rother District.

An environmental objective

- 3.1.8 It will be demonstrated that the appeal proposals have no unacceptable environmental effects. The proposals involve the provision of a significant area of informal and formal public open space, landscaping and ecological mitigation.
- 3.1.9 Even where these benefits are offered to mitigate the impact of the appeal proposals, they will also be of benefit to existing residents of the local area and there is no guarantee they would be provided in the absence of the appeal proposals coming forward. The benefits are unique to this development and this locality.
- 3.1.10 Overall, the scheme will deliver significant material benefits and the proposals represent sustainable development.

The Presumption in Favour of Sustainable Development

- 3.1.11 The presumption in favour of sustainable development sits at the heart of the Framework. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making.
- 3.1.12 The appeal proposals will deliver new housing development which will assist the Council by contributing towards the requisite land supply and will also assist in meeting the central government objective of “boosting significantly” the supply of housing whilst remedying the extremely large deficit of affordable housing in the district. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites. Therefore, the policies most important for determining the appeal are out of date and the presumption in favour of sustainable development (tilted balance) set out in paragraph 11d(ii) is applicable.
- 3.1.13 It is expected to be common ground for the purpose of the appeal that the tilted balance is engaged.
- 3.1.14 The appeal proposals will deliver new housing development both locally and nationally; will assist RDC by contributing towards the required five-year housing land supply and supporting the central government objective of “significantly boosting” the supply of housing.
- 3.1.15 There are therefore very significant material considerations which outweigh the statutory presumption in favour of the Rother Development Plan.

3.2 Five-Year Housing Land Supply

3.2.1 The Council currently accepts it cannot demonstrate a five-year housing land supply. Its most recent housing land supply statement published in November 2021 considers the supply is equivalent to 2.89 years.

3.2.2 The appeal proposal therefore responds to the urgent requirement to identify new development sites to meet housing needs in order to demonstrate a sufficient housing land supply within the district.

3.2.3 The Appellant reasonably anticipates that it will be common ground that the Council cannot demonstrate a five-year housing land supply for the purpose of the appeal.

3.2.4 The Appellant reserves the right to adduce evidence and witnesses on the matter of five-year housing land supply if the Council's position materially changes prior to the inquiry.

3.3 Housing Delivery Test

3.3.1 The Housing Delivery Test (HDT) was introduced by the government as a monitoring tool to speed up housing delivery. The HDT results published on 14th January 2022 indicate that just 57% of the required number of homes over the previous three years were built in Rother District.

3.3.2 As a result of the HDT for RDC indicating delivery below 75% of the housing requirement over the previous three years, the presumption in favour of sustainable development applies.³

3.3.3 Furthermore, the LPA must prepare HDT 'Action Plan'⁴ and apply a 20% buffer to its supply of specific, deliverable housing sites.⁵ The LPA most recently published a HDT Action Plan in July 2022.

3.4 Local Plan Review

3.4.1 Paragraph 48 of the Framework advises that local planning authorities can give weight to relevant policies in emerging plans according to their stage of preparation, extent to which there are unresolved objections and the degree of consistency with the Framework.

³ NPPF footnote 8.

⁴ NPPF paragraph 76.

⁵ NPPF paragraph 74.

3.4.2 At the time of writing, Rother District Council have begun early preparatory work on a new Local Plan that will cover the period 2019-2039.

3.4.3 However, at this stage there are no emerging policies. Therefore, the emerging Local Plan cannot be afforded weight in the decision-making process.

3.5 Other Documents

3.5.1 The Appellant may also refer to the following policy documents:

- Supplementary Planning Documents/Guidance;
- Emerging Local Plan evidence base;
- Planning application and appeal decisions – these will be agreed with the LPA and provided as Core Documents.

4 OUTSTANDING MATTERS & ISSUES IN DISPUTE

4.1 Introduction

4.1.1 As this appeal is made against the non-determination of a planning application there are no formal reasons for refusal to respond to at the present time. However, taking account of the feedback received from Council officers and the views of statutory consultees received to date, the Appellant currently envisages that the appeal is likely to focus on two main issues (principle of development and landscape).

4.1.2 The Appellant is hopeful that the third, fourth and fifth outstanding matters; highways, accessibility and impacts on designated sites respectively, will be capable of being resolved or successfully addressed and will cease to be areas of dispute between the appeal parties. However, as it is currently unresolved, this matter is also described in this section for completeness.

4.1.3 The Appellant reserves the right to amend its Statement of Case in response to any subsequent putative reasons for refusal and/or issues raised in the Statement of Case prepared by the Council.

4.2 Issue 1 - Principle of Development

4.2.1 As explained above, the Appellant acknowledges that the appeal proposal is in conflict with certain policies of the DaSA Local Plan, insofar as the site is not allocated for development and is located outside of Bexhill's development boundary. The appeal proposals therefore conflict with Policies OSS2 and DIM2.

4.2.2 However, the Appellant will demonstrate why this conflict should be afforded limited weight for the purposes of decision-making, taking account of five-year housing land supply and other relevant planning considerations.

4.2.3 The Appellant will demonstrate that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of granting planning permission in this case, when considered against paragraph 11(d)ii of the Framework and the presumption in favour of sustainable development. It will further show that this is not a situation where any restrictive policies would act to dis-apply the presumption.

4.3 Issue 2 – Landscape

- 4.3.1 Through the application consultation process, the County Landscape Architect recommended that the proposed development should not be supported as it would have an unacceptable impact on local landscape character and visual amenity [CD3.07].
- 4.3.2 The Appellant provided a response to the Landscape Architect’s comments [CD2.05], which sought to address the concerns raised by the County Landscape Architect. A further response from the County Landscape Architect has not been received and the Appellant must therefore assume that the objection on landscape grounds remains.
- 4.3.3 Whilst the proposals would inevitably introduce some changes to the area, the Appellant contends that the level of landscape and visual harm caused by the proposed development would be no more than would be typically expected from the development of a greenfield site. Accordingly, the Appellant will adduce evidence to demonstrate that the appeal site is capable of accommodating a residential scheme of the nature proposed without any unacceptable landscape and visual effects.

4.4 Issue 3 – Highways

- 4.4.1 A pre-application discussion took place between the Appellant’s transport consultant and National Highways [see Appendix B of CD1.18] prior to the submission of the application. The Appellant considered that all matters discussed were addressed in the submitted Transport Assessment [CD1.18]
- 4.4.2 During the application process, National Highways requested further information on several matters in relation to the impact of the proposed development on strategic highways [CD3.05, CD3.09, CD3.10 and CD3.11]. The Appellant provided further information via technical notes submitted in February 2022 [CD2.03] and June 2022 [CD2.06] respectively and the Appellant’s transport consultant is currently liaising with National Highways to address the remaining outstanding matters set out in National Highways’ most recent response [CD3.11].
- 4.4.3 Notwithstanding this, it is anticipated that all outstanding matters will be resolved prior to the appeal, such that and that the impact of the proposed development on the strategic highway network will not constitute a main issue. However, should National Highways continue to maintain their objection, the Appellant will adduce evidence on this matter.

4.5 Issue 4 – Access to services and facilities via sustainable transport modes

4.5.1 East Sussex County Council, in its capacity as local highway authority (LHA), have queried whether the location of the site would offer opportunities to access services and facilities via sustainable transport modes. In its initial response to the application, East Sussex County Council proposed the following reason for refusal:

“The proposed development is poorly placed in terms of sustainable transport modes due to the lack of non-car travel choices for residents and would therefore be would therefore be contrary to para 104 and 106 of the National Planning Policy Framework”. [CD3.06]

4.5.2 In response to the LHA’s comments, the Appellant submitted a detailed technical note [CD2.04].

4.5.3 The most recent response of the LHA stated that further discussions are necessary in order to secure improvement works as part of the development proposals in order to provide appropriate mitigation and resolve the LHA’s outstanding concerns [CD3.06]. It suggested that:

“...the provision of a DRT service for residents and improvements to the cycle/pedestrian link west of the site to Little Common would go some way to improving sustainable travel choice for new residents and this may be sufficient for my objection to be withdrawn”.

4.5.4 The appellant has sought to proactively engage with the LHA and has offered a package of improvements [CD2.07] it believes is sufficient to address these concerns. However, the LHA has not formally removed its objection and the Appellant reserves the right to adduce evidence on the impact of the proposed development in relation to sustainable transport.

4.6 Issue 5 – Impacts on Designated Sites

4.6.1 Natural England expressed concerns that the information presented in the Shadow Habitats Regulations Assessment [CD1.10] and Flood Risk Assessment & Outline Surface Water Drainage Strategy [CD1.14] left uncertainty over the potential for adverse effects on European sites of the Pevensey Levels [CD3.08]. A revised Shadow Habitats Regulations Assessment was submitted by the Appellant, with the intention of addressing any such uncertainty, such that

the LPA, as competent authority for at planning application stage, could carry out its Appropriate Assessment (AA).

4.6.2 However, no further responses have been received from the LPA or Natural England on this matter and it is unclear whether the LPA has carried out an AA. In any event, the appeal inspector now has responsibility for undertaking the AA.

4.6.3 The Appellant considers that it has discharged its duty under Regulation 63(2) of the Conservation of Habitats and Species Regulations 2017 to provide sufficient information to enable the competent authority to carry out its AA.

4.6.4 The Appellant anticipates considers that, with consideration of the proposed measures intended to avoid or reduce effects (i.e. policy-compliant pollution prevention controls during construction and operation of the proposed development) it is anticipated that the AA will conclude that the proposed development will not have any adverse effect on the integrity of the Pevensey Levels SAC / Ramsar site, either alone or in combination with other plans or projects.

4.6.5 The Appellant reserves the right to produce detailed evidence on this matter upon receipt of the Council's case.

4.7 Third Party Objections

4.7.1 In addition to the issues raised by the Council and consultees, a number of objections were received from third parties to the planning application.

4.7.2 The Appellant reserves the right to adduce further evidence to address any matters raised by third parties to the inquiry or where an interested party granted Rule 6 status puts forward evidence on matters beyond any putative reasons for refusal. The appellant proposes to make witnesses available for the first day of the inquiry to respond to concerns raised by members of the public.

5 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS

5.1 Planning Conditions

5.1.1 The parties will seek to reach agreement on planning conditions in advance of the inquiry.

5.2 Section 106 Obligations

5.2.1 It is proposed that the obligation will be provided by way of bilateral agreement. This will be issued to the Council for comment in advance of the appeal in order to provide reasonable opportunity for agreement to be reached and in order for a draft bilateral agreement to be provided to the Inspector 10 days in advance of the Inquiry, in accordance with the PINs Procedural Guide.

5.2.2 The bilateral agreement will include provisions relating to securing of affordable housing and management of on-site public open space.

6 PLANNING BALANCE AND CONCLUSION

6.1 Planning Balance

6.1.1 Planning law requires that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

6.1.2 The proposal will deliver housing on a sustainable site at a time when the Council has failed the HDT and cannot demonstrate a five-year supply of deliverable sites.

6.1.3 The Appellant will demonstrate that the appeal site represents a suitable and sustainable location for the quantum and nature of the development proposed. Where conflict is alleged with policies of the development plan which seek to guide the location of development, the Appellant will demonstrate that those policies serve to restrict the construction of much-needed market and affordable homes and cannot be determinative in this case.

6.1.4 The appeal proposal will secure a range of benefits that will be demonstrated in full in evidence. These include, *inter alia*:

- Up to 210 dwellings in a sustainable location, to meet pressing need;
- 30% affordable housing (up to 63 dwellings) on-site to address an identified affordable housing need;
- New areas of publicly accessible open space and green infrastructure, including a children's play area and new recreational routes;
- An estimated construction spend of £21.7 million;
- Supporting of approximately 175 FTE construction jobs over a three-year build out;
- An estimated residents' gross expenditure circa £7.66 million annually; and
- Additional Council Tax and New Homes Bonus revenue.

6.1.5 It will be demonstrated that the harm arising in respect of the appeal proposal is no more than might reasonably be anticipated when changing a green field to one of built form. There are no identified technical or other matters that would significantly and demonstrably outweigh the substantial benefits of the proposal.

6.2 Conclusion

6.2.1 In accordance with paragraph d(ii) of the Framework, it will be demonstrated there are no material adverse impacts arising from the appeal proposal that would significantly and demonstrably outweigh the benefits the development will deliver. There are no specific

policies of the Framework which would either preclude or restrict the development in the current circumstances.

- 6.2.2 It is clear there are very significant material considerations in favour of a grant of planning permission. The benefits of the proposed development clearly outweigh any extremely limited harms and planning permission should therefore be granted.