

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.***

Statement of Common Ground between the Appellant and  
Rother District Council

LPA Reference: RR/2021/1656/P

Appeal Ref: APP/U1430/W/22/3304805

**25<sup>th</sup> November 2022**

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# 1 INTRODUCTION

## 1.1 Background

1.1.1 This Statement of Common Ground (SoCG) has been prepared jointly by Gladman Developments Limited (hereinafter referred to as 'the Appellant') and Rother District Council (hereinafter referred to as 'the Council').

1.1.2 The Statement concerns an appeal made pursuant to the non-determination of planning application RR/2021/1656/P by the Council at Land off Fryatts Way, Bexhill (hereinafter referred to as "The Site"). The development proposal is for:

*"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."*

1.1.3 This Statement sets out the agreed matters of fact and agreed positions between the Council and the Appellant in respect of this appeal, as well as areas of disagreement.

## 1.2 Parties

1.2.1 This final version of the SoCG is jointly signed and agreed by:



Name: Christien Lee

Date: 25/11/22

On behalf of the Appellant

Position: Planning Director



Name : Clare Gibbons

On behalf of Rother District Council

Date: 25/11/22

Position:

## 2 BACKGROUND AND PROPOSALS

### 2.1 Background to the Appeal

2.1.1 This Statement of Common Ground refers to an appeal against the non-determination of the outline planning application RR/2021/1656/P.

2.1.2 The planning application subject to this appeal was submitted to the Council on 1<sup>st</sup> July 2021. The application was supported by a suite of technical reports in accordance with the Council's planning application validation requirements.

2.1.3 Planning law requires that applications for planning for 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.

2.1.4 In this context, the original statutory 13-week period for determining the Appellant's application proposals expired on 30<sup>th</sup> September 2021, after which point the Appellant and the Council agreed several extensions of time ('EoT') for the determination of the application to address issues raised by statutory consultees. The most recent EoT agreed by both parties expired on 30<sup>th</sup> May 2022.

### 2.2 Site Description

2.2.1 The appeal site, comprising 11.29ha of countryside adjacent to the existing development boundary 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.

2.2.2 The site comprises three irregularly shaped fields immediately adjacent to the settlement edge of Bexhill but outside of the development boundary most recently defined in the Development and Site Allocations Local Plan (DaSA LP).

2.2.3 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.

## 2.3 The Appeal Proposals

2.3.1 The Appellant seeks outline planning permission with all matters reserved except for access for a residential development comprising:

- Up to 210 dwellings;
- 30% affordable housing;
- 5% of plots to be made available as serviced plots for self and custom builders;
- Singular vehicular access point provided from Fryatts Way into the site;
- Areas of informal and formal public open space, with full details of composition to be agreed at reserved matters stage; and
- Children's play area to be provided on-site.

2.3.2 As the application is in outline format, the precise housing mix is not yet set. The appellant has committed to providing 30% of properties as affordable housing. Therefore, if 210 homes were to be provided, this would result in 147 market dwellings with 63 dwellings being affordable properties (in accordance with the definitions set out in the National Planning Policy Framework).

2.3.3 The appeal proposals include a Development Framework Plan [CD1.03] and a Design and Access Statement (DAS) [CD1.07], demonstrating in outline how a scheme could be delivered on-site.

2.3.4 The Development Framework Plan [CD1.03] indicates 6.90ha of proposed residential development and 4.39ha of public open space/green infrastructure. The informal open space includes planting, pedestrian links and footpaths throughout the site. The proposed 'Local Equipped Area for Play' (LEAP) is shown on the Development Framework central to the site, set adjacent to existing trees and hedgerows. This play area is not required by the local planning policies.

2.3.5 Details regarding flood mitigation measures such as attenuation ponds are indicated on the Development Framework Plan. Detailed resolution of flood mitigation strategy to address compliance with both the Council, Natural England and LLFA requirements and resolve related land take commitment is to be addressed as a reserved matter application and is not a matter for this appeal.

## 2.4 Application Documents

2.4.1 The following documents were considered by the Council at application stage:

- Planning Statement
- Transport Assessment
- Travel Plan
- Statement of Community Involvement
- Noise Screening Assessment
- Air Quality Screening Assessment
- Utilities Statement
- Flood Risk Assessment & Outline Surface Water Drainage Strategy
- Phase 1 Preliminary Risk Assessment
- Archaeological Desk-Based Assessment
- Arboricultural Assessment
- Shadow Habitats Regulations Assessment
- Ecological Appraisal
- Landscape and Visual Appraisal
- Design & Access Statement
- Affordable Housing Statement
- Economic Recovery Following Covid-19
- Badger Survey Report (confidential)

## 2.5 Plans for Approval

2.5.1 The drawings for which planning permission is sought are as follows:

<b>Drawing ref</b>	<b>Drawing Name</b>	<b>CD Ref</b>
9309-L-01 Rev G	Location Plan	CD1.02
A115791-27-C P001-01	Site Access Design	CD1.18



### 3 PLANNING POLICY

#### 3.1 The Development Plan

3.1.1 It is agreed that the relevant parts of the statutory development plan comprise the following:

- Rother Local Plan Core Strategy (2014); and
- Rother Development and Site Allocations (2019; DaSA Local Plan).

3.1.2 The parties agree that the development plan policies considered relevant to this appeal:

##### **Rother Local Plan Core Strategy**

- Policy OSS1 – Overall Spatial Development Strategy
- Policy OSS2 – Use of Development Boundaries
- Policy OSS3 – Location of Development
- Policy OSS4 – General Development Considerations
- Policy BX1: Overall Strategy for Bexhill
- Policy BX3 – Development Strategy
- Policy RA2 – General Strategy for the Countryside
- Policy RA3 – Development in the Countryside
- Policy EN1 – Landscape Stewardship
- Policy EN2 – Stewardship of the Built Environment
- Policy EN3 – Design Quality
- Policy EN5 – Biodiversity and Green Space
- Policy EN7 – Flood Risk and Environment
- Policy TR2 – Integrated Transport
- Policy TR3 – Access and New Development
- Policy SRM1 – Towards a low carbon future
- Policy IM2 – Implementation and Infrastructure

##### **Rother Development and Site Allocations (DaSA Local Plan)**

- Policy DIM1 – Comprehensive Development
- Policy DIM2 – Development Boundaries
- Policy OVE1 – Housing Supply and Delivery Pending Plans
- Policy DHG1 – Affordable Housing
- Policy DHG6 – Self-build and Custom Housebuilding

- Policy DEN1 – Maintaining Landscape Character
- Policy DEN4 – Biodiversity and Green Space
- Policy DEN5 – Sustainable Drainage
- Policy DEN7 - Environmental Pollution

3.1.3 The designated development area of Bexhill is identified as the largest settlement and the only first-tier settlement within the adopted Rother Local Plan Core Strategy (RLPCS).

3.1.4 The designated development area of Bexhill is identified as the principle focus for significant housing and employment development, consistent with its relative size, range of services and location outside of any national landscape designations.

3.1.5 'Figure 8: Approximate Development Levels' of the RLPCS and reiterated in paragraph 9.6 of the DaSA Local Plan requires provision of a minimum of 3,100 dwellings in Bexhill, to meet all of the communities housing needs, to be delivered over the plan period.

## 3.2 Local Plan Review

3.2.1 Rother District Council have begun early preparatory work on a new Local Plan that will cover the period 2019-2039. However, at this stage there are no emerging policies and therefore parties agree that the emerging Local Plan cannot be afforded weight in the decision-making process.

## 3.3 National Planning Policy Framework

3.3.1 The parties agree that the National Planning Policy Framework (NPPF) is an important material consideration in the determination of this appeal.

## 4 MATTERS ON WHICH THE PARTIES AGREE

### 4.1 Introduction

- 4.1.1 The following matters are not considered to be an issue for this appeal except where otherwise stated.

## TECHNICAL MATTERS

### 4.2 Arboriculture

- 4.2.1 The parties agree that the removal of two trees to facilitate internal vehicular access to the site should not be considered a significant constraint to the proposals.
- 4.2.2 The parties agree that, with the provision of new planting and the retention of existing tree and hedgerow cover, it is considered that the proposals would mitigate the impact of the development and could present an opportunity to increase the arboricultural value of the site. The list of suggested conditions includes provisions to safeguard the retained trees and require details of landscaping.

### 4.3 Archaeology

- 4.3.1 The Archaeological Desk-Based Assessment [CD1.12] concludes that there is no evidence to suggest significant archaeological remains are likely to be present within the site. The parties agree that any further archaeological investigations can be secured by planning condition.

### 4.4 Ecology

- 4.4.0 The Ecological Appraisal recognises that there are a number of protected species on the site, including reptiles, bats and dormice. The Ecological Appraisal [CD1.09] indicated that further survey works would be undertaken. Since the Ecological Appraisal was submitted, several further ecological surveys have been undertaken, the results of which inform an Addendum Report [CD6.17].
- 4.4.1 It is agreed the appeal proposal has the potential to protect, diversify, and improve the biodiversity of the site through implementing new hedgerow, tree planting, wildflower planting and delivery of new garden spaces. These measures will help achieve biologically diverse formal and informal green spaces. This will need to be demonstrated by the appellants as part of the reserved matters application.

4.4.2 In terms of the information submitted by the appellant, the parties consider that mitigation measures will be required to avoid or reduce effects on the integrity of the Pevensey Levels SAC / Ramsar site.

4.4.3 It is noted by the parties that in their role as decision-maker, the appeal inspector becomes the competent authority for the purposes of Habitats Regulations Assessment in this case.

## 4.5 Flood Risk and Drainage

4.5.1 Policy EN7 of the Core Strategy states that flood risk will be taken into account at all stages in the planning process to avoid inappropriate development in areas at current or future risk from flooding and to direct development away from areas of highest risk. Policy DEN5 of the DaSA expects drainage to be considered as an integral part of the development design process and within the Pevensey Levels Hydrological Catchment Area, SuDS design should incorporate at least two stages of suitable treatment unless demonstrably inappropriate.

4.5.2 The majority of the site falls within Flood Zone 1 (low probability of flooding) with the redline boundary excluding the main river and associated Flood Zone 3 to the west of the site. All proposed development is located within Flood Zone 1 (low risk). The southern part of the site includes a small area that is at risk (high and low risk) from surface water flooding. The parties acknowledge that there is no requirement for a sequential test pursuant to the NPPF/PPG if development is avoided in the 'at risk' areas. The appellant considers that this surface water flow path that forms the at risk area can be incorporated within on-site sustainable drainage features without increasing flood risk on-site or elsewhere.

4.5.3 The Lead Local Flood Authority [CD3.04] and Environment Agency [CD3.03] have no objection to the proposals put forward for dealing with surface water drainage, subject to a reserved matters application and requisite conditions.

4.5.4 Some of the proposed attenuation ponds will abut the edge of the current Flood Zone 3. The LLFA has commented that the most recent modelling undertaken by the Environment Agency has not informed the current proposal and this will need to be taken into account when detailed proposals are drawn up. Detailed investigation would be required of all the pipe outfalls and the area they serve. If it is established that they serve any off-site areas the culverts should either be retained as they are or diverted through the development safely. This information could follow at the reserved matter stage. The LLFA also comments that the proposed ponds/basins are shown to be in areas that have groundwater levels at less than 2m below ground level on British Geological Survey data. Therefore, the design of surface water

storage structures should be informed by the findings of groundwater monitoring, preferable covering 12 months but at a minimum the period between autumn and spring. The LLFA has recommended conditions to address these matters and they are included as recommended conditions.

4.5.5 Both parties agree that the proposed development, as reviewed by the LLFA [CD3.04] could, accord with policies EN7 and DEN5. The reserved matters application would need to demonstrate that the development would be satisfactorily served by SuDs.

4.5.6 It is agreed that it is appropriate for full details of the proposed methods of foul and surface water drainage required to be brought forward by suitably worded conditions.

## 4.6 Heritage

4.6.1 The parties agree that the proposed development will have no adverse impacts on any known designated heritage assets.

## 4.7 Landscape

4.7.1 The site is not covered by any statutory designations for landscape character or quality. The parties agree that for the purposes of this appeal, the site does not constitute a 'Valued Landscape' as defined by paragraph 174 a) of the NPPF but lies within the countryside as set out in paragraph 174(b).

## 4.8 Pollution

4.8.1 Policy OSS3 (viii) of the Core Strategy requires the suitability of a particular location for development should be considered in the context of any constraints relating to contamination and the ability to satisfactorily address these. Policy DEN7 of the DaSA states that development will only be permitted where it is demonstrated that there would be no significant adverse impacts on health or local amenities as a result of land contamination.

4.8.2 The Phase 1 Preliminary Risk Assessment accompanying the application concludes that the *'the potential for contamination at the site is considered to be low risk'* but recommended a Phase 2 intrusive investigation as the next step to reduce any uncertainty associated with the conceptual model of contamination and confirm the on-site geology. The Council's Environmental Health Department has recommended conditions required remedial measures and a contaminated watching brief that are included in the list of suggested conditions.

4.8.3 Both parties agree that conditions can control and mitigate any potential impacts relating to construction management and air quality.

#### 4.9 Impact on the amenity of neighbouring residential occupiers at 11 and 15 Fryatts Way

4.9.1 The addendum noise assessment (102252-3\_Technical Note, 04/11/22) presents the results of noise modelling of the access road using predicted traffic flows and the CRTN calculation method. The assessment concludes that suitable noise levels can be achieved at nos 11 and 15 Fryatts Way with the use of mitigation in the form of a 1.8m high structure along the boundaries and a 20mph speed limit along the access road. The parties agree that the details of these mitigation measures can be secured by planning condition.

#### 4.10 Impact on the Strategic Highway Network

4.10.1 The parties agree that in light of the agreed position between the Appellant and National Highways (see *Statement of Common Ground on Highways and Transport Matters between the Appellant and National Highways*) putative Reason for Refusal 3 is no longer contested.

## PLANNING MATTERS

#### 4.11 Affordable Housing

4.11.1 Policy LHN2 of the RLPCS sets a requirement for housing sites or mixed-use developments in Bexhill of 15 or more dwellings (or 0.5 hectares or more) to provide on-site delivery of affordable housing equal to 30% of the number of the dwellings on site. This is likewise reflected in policy DHG1 of the DaSA. The proposal provides 30% affordable housing (up to 63 dwellings) and is therefore policy compliant in principle. Although at this stage, there are no details of their size and mix and distribution throughout the site, which will be considered by a reserved matters application. Policy DHG6 of the DaSA also requires that for sites of 20 or more dwellings, provisions for 5-10% of the total number of dwellings should be available as serviced plots for self and custom housebuilders.

4.11.2 Both parties consider that the affordable housing provision and the self/custom housing units will be secured through the Section 106 obligation.

4.11.3 The delivery of affordable housing is a material benefit of the scheme which should be afforded at least significant positive weight.

## 4.12 Design

4.12.1 The parties agree that, as the application is in outline only, the approval of layout, scale, design and landscaping should be considered at reserved matters application stage.

4.12.2 The Development Framework Plan [CD1.03] indicates one way in which the site could be laid out to achieve up to 210 dwellings on site, whilst accommodating green infrastructure, open space, SUDS infrastructure and an internal site circulation route. When considering the proposal, it has been recognised that the information provided at this stage is illustrative and the parties agree that the reserved matters stage would consider the exact number of dwellings, hierarchical structure to the street layout, landscaping and associated infrastructure and other detailed matters. The details of the appearance, landscaping and layout of the site would be the subject of a reserved matters application. Sussex Police has raised no objection but made suggestions from a Secured by Design Perspective that can be addressed at the reserved matters application.

## 4.13 Delivery of the Site

4.13.1 In terms of information submitted by the appellant, the Council has not been provided with information to suggest that there are any known technical matters that will prevent the appeal proposals from being delivered in a timely manner.

## 4.14 Economic and Social Benefits

4.14.1 It is agreed that the appeal proposals would generate a number of economic benefits as outlined in the 'Economy Recovery Following Covid-19' report [CD1.05].

4.14.2 The appellants suggest that the development offers the following benefits:

- Up to 210 dwellings to meet 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;
- Supporting of approximately 242 FTE construction jobs over six-year build out;
- An estimated residents' gross expenditure circa £7.6 million annually; and

- Additional Council Tax and New Homes Bonus revenue.

4.14.3 The parties agree that economic benefits weigh positively within the planning balance.

## 4.15 Housing Land Supply

4.15.1 The parties agree that Rother District Council is currently unable to demonstrate a sufficient five-year housing land supply. The current position is agreed to be a maximum of 2.89 years, as confirmed within the Council's housing land supply position statement published in November 2021. This equates to a shortfall of 1,871 dwellings.

## 4.16 Planning Obligations

4.16.1 The parties agree that in light of the provision of an agreed S106 obligation, putative Reason for Refusal 4 is no longer contested.



## 5 MATTERS ON WHICH THE PARTIES DISAGREE

### 5.1 Introduction

5.1.1 This section sets out those matters on which the two parties disagree.

### 5.2 Landscape

5.2.1 The parties disagree as to whether the proposed development would have an unacceptable impact on local landscape character and visual amenity.

### 5.3 Reliance of future occupiers of the site on the private motor vehicle

5.3.1 The parties disagree as to whether the proposed development would amount to a sustainable location for development and whether it would result in a reliance on private motor vehicles to be able to access a sufficient range of services, facilities and employment.

## 6 SUGGESTED PLANNING CONDITIONS

- 6.1.1 The appellant and Council have agreed a list of suggested planning conditions for discussion at the inquiry.

## 7 PLANNING OBLIGATIONS

7.1.1 A draft S106 agreement has been provided to the Inspector.

7.1.2 A final agreed S106 will be provided to the Inspector prior to the opening of the inquiry.