

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

**PROOF OF EVIDENCE OF CLARE GIBBONS ON BEHALF OF ROTHER
DISTRICT COUNCIL**

SUMMARY

1. The Council's shortfall in housing supply triggers a general presumption in favour of sustainable development but this does not change the status of the development plan as being the starting point for decision making. Rother's Core Strategy sets the overall vision and objectives for development and the Development and Site Allocations Local Plan contains policies relating to development and housing allocations. Neither document identifies the appeal site as being appropriate for development.
2. My proof of evidence sets out the key considerations that inform the spatial strategy and how the appeal proposal runs contrary to the guiding principles. Notably, the appeal proposal represents a significant extension on the periphery of Bexhill in a location that is not well served by public transport or with adequate facilities to encourage pedestrians or cyclists. Also due to its scale and nature, the appeal proposal represents an urban intrusion into a green network of open spaces, causing harm to the landscape. Furthermore, the single access into and out of the site serving the proposed quantum of housing would result in noise and disturbance adversely affecting the amenity of neighbouring residential occupiers. In terms of planning balance, these adverse impacts are considered to be significant and weigh against the benefits of providing additional housing. Due to its scale, nature and location, the proposal does not amount to sustainable development and is contrary to local and national planning policies.

QUALIFICATIONS

My name is Clare Gibbons. I am a Team Leader in the Development Management Section of Rother District Council.

I am a qualified town planner with over 25 years' experience in town and country planning matters. I hold a Bachelor of Arts degree in Urban Studies and a postgraduate diploma in Town and Regional Planning from the University of Sheffield. I am a chartered member of the Royal Town Planning Institute since 1998.

I have worked at Rother District Council since March 2021. Prior to that I have undertaken a variety of planning roles in different sectors, including most recently for an engineering consultancy and the water sector.

I am familiar with the site, the development proposals and the issues arising.

1.0 Introduction

1.1 My evidence addresses the appropriateness of the location for development, impact on the amenity of neighbouring residential occupiers and the planning balance identified as (MI1), (MI5) and (MI8) respectively.

1.2 My evidence is presented as follows:

- Section 2 – whether the appeal site is an appropriate location for the proposed development with reference to the spatial strategy in the development plan
- Section 3 – the effect on the living conditions of the occupants of 11 and 15 Fryatts Way with reference to noise and disturbance
- Section 4 – if there is conflict with the development plan, whether other considerations indicate the proposal should be determined otherwise than in accordance with the development plan.

2.0 Whether the appeal site is an appropriate location for the proposed development, with reference to the spatial strategy in the development plan

2.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 makes it clear that applications for development must be determined in accordance with the development plan, unless material considerations indicate otherwise. This requirement of planning law is reiterated in paragraphs 2 and 47 of the NPPF and in the National Planning Practice Guidance (Paragraph: 001 Reference ID: 61-001-2010315).

2.2 The Council is able to identify 2.89 years of housing supply as set out in the latest published Housing Land Supply incorporating Housing Trajectory¹. This position is unlikely to change significantly this year and if the latest Housing Land Supply is published before the inquiry, the Council will advise the Inspector and appellant as soon as possible. The shortfall in housing supply triggers a general presumption in favour of sustainable development and means that the development boundaries and related restrictions on development in the countryside must be acknowledged as being 'out-of-date'. However, this does not mean that the considerations that gave rise to them should not carry weight. Also, paragraph 11 of the NPPF sets out that planning permission should be granted unless '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole*'. However, this does not mean that substantial weight cannot be attributed to the development plan and paragraph 12 of the NPPF is clear that '*the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making*'.

¹ Housing Land Supply (incorporating Housing Trajectory) (April 2021 position statement) published November 2021.

- 2.3 One of the key roles of the development plan is to set the '*overall strategy for the pattern, scale and design quality of places*²'. Rother's Core Strategy (2014) sets the overall vision and objectives for development for the district up to 2028 and includes policies relating to the scale and distribution of development across towns and rural areas. The Development and Site Allocations (DaSA) Local Plan (2019) contains development and site allocation policies and should be given significant weight due to its adoption three years ago.
- 2.4 Policy OSS1 of the Core Strategy requires at least 5,700 net additional dwellings to be built over the plan period 2011-2028 and that suitable sites will be identified with the focus of new development at Bexhill. The supporting text at paragraph 7.37 states *that 'In all cases, the distribution of development also needs to be mindful of valuable environmental and heritage assets, as well as infrastructure availability. Potential sites to deliver the housing strategy are identified in the Strategic Housing Land Availability (SHLAA) Review 2013'*. The SHLAA 2013³ identified the appeal site as site 'BX8' and one of the conclusions was that '*Any development at this location would constitute as a significant incursion into existing open countryside, contrary to OSS5(iii)*'.
- 2.5 Policy OSS2 of the Core Strategy provides a basis for reviewing development boundaries to meet development requirements and sets out the key criteria that should be considered when doing so. These considerations are the basis for considering whether a location is appropriate for development. The appeal proposal does not comply with most of the criteria namely (i), (ii), (iii), (vii) and (viii) as set out in evidence produced by Mr. Peter Dijkhuis and (v) and (vi) as set out in the in evidence produced by Mr. Nick Robinson.
- 2.6 Furthermore, policy OSS3 of the Core Strategy sets out the general development considerations covering the social, economic and environmental impacts of

² Paragraph 20 of the National Planning Policy Framework 2021.

³ Page 8 of the Strategic Housing Land Availability Assessment (SHLAA) 2013 Review – Part 2 – Settlement Maps and Tables.

development and provide the basis for assessing the sustainability of development. Whilst the appeal proposal would provide the benefit of housing, the site is not well connected to existing services and so the occupants of up to 210 houses would be reliant on the private car and the proposal would have a harmful impact on the character and qualities of the landscape and wider green network. Therefore, the size, nature and location of the development would not achieve the environmental dimensions of sustainable development and outweigh against it.

2.7 The Core Strategy does have a chapter focused on Bexhill and policy BX3 of the Core Strategy sets out that new residential and employment development will contribute to an overall level of housing growth of 3,100 dwellings. However, the appeal proposal of up to 210 houses is considered to be a significant extension at the edge of Bexhill and paragraph 8.47 of the supporting text recognises that *'large-scale growth would not be consistent with the objective of retaining its essential character'*. Also it would be contrary to the spatial strategy shown on Map 2:Bexhill Inset Diagram (Appendix 1) that shows the main area of growth to the north east of Bexhill and smaller areas of potential growth to the north and west of Bexhill. The appeal site is indicated as forming part of a 'Strategic Open Space'.

2.8 The application site is not allocated for development in the Development and Site Allocations Local Plan (DaSA) (2019) and falls outside, albeit adjacent to, the development boundary. As above, it is recognised that the development boundary is out-of-date but the supporting text to policy DIM2 of the DaSA is considered relevant as it sets out the rationale for development boundaries and preventing urban sprawl. Paragraph 7.13 of the supporting text sets out that the two main principles for making the distinction between where development is and is not allowed is to *'recognise the intrinsic character and beauty of the countryside'* and *'the need to manage patterns of growth to realise opportunities for walking, cycling and use of public transport, with significant development focused on locations which are or can be made sustainable'*. The proposal involves providing a single point of access to a

sizeable suburban extension and raises significant issues in respect of both these guiding principles.

- 2.9 Chapter 9 of the DaSA considers Bexhill as a focus for development within the District with paragraph 9.7 stating that *'Allocations both within and on the edges of the town are identified to ensure that sufficient housing is built in the plan period. Most notable is the identification of three linked sites to the north of the town, together providing some 530 new homes, as well as associated infrastructure'*. In chapter 9 there is a section on the development boundary and paragraph 9.15 is clear that the development boundary is drawn tightly around the built-up area of Bexhill to prevent encroachment into the countryside. Furthermore, pertinent to the appeal proposal is paragraph 9.18 that states *'West of the A269, development beyond the existing built-up area would detrimentally and unnecessarily erode the countryside setting of that part of the town and is resisted while, further west, the pattern of fields, defined by trees and hedgerows as well as blocks of woodland, relates much more to the surrounding countryside. This runs into the heavily wooded ridge of High Woods and Whydown, which feels relatively remote from the town. Hence, the development boundary follows the existing urban edge in this direction'*.
- 2.10 Whilst the appellant argues that the proposal would facilitate a logical extension of Bexhill, the proposal raises significant issues in terms of local and national planning policies that guide development and weigh against it being an appropriate location for the proposed scale and nature of development. The sections above highlight that the key considerations of developing this peripheral location are the landscape impacts and whether there are opportunities to reduce the need to travel and encourage active travel modes. Also, given the proposal involves a single point of access serving up to 210 residential units between two properties (11 and 15 Fryatts Way), it is considered that the noise and disturbance associated with the travel movements would have an adverse impact on the residential amenity of the occupiers therein. These considerations, which are subject to other local and national planning policies weigh against the proposal being an appropriate

location for development.

3.0 Harm to amenity of neighbouring residential occupiers

- 3.1 The proposed access serving up to 210 residential properties would be positioned directly in between nos. 11 and 15 Fryatts Way. The Council's concern is that only one access serving up to 210 residential units would have an adverse impact on the amenity of neighbouring residential occupiers, principally nos. 11 and 15 Fryatts Way.
- 3.2 The application was accompanied by a Noise Screening Assessment (CD1.17) that concludes in paragraph 6.4 that '*Future traffic flows on existing residential roads could potentially result in an increase in traffic noise levels at existing receptors along Fryatts Way, however careful design and appropriate traffic management should serve to limit the level and extent of any significant effects, with the understanding that some adverse effects can occur as long as all reasonable steps have been taken to mitigate and minimise the effects*'. This conclusion recognises that mitigation measures would be required to reduce any significant effects but adverse effects would remain.
- 3.3 The Council's Environmental Health Department (CD3.02) accepts that the absolute road traffic noise levels on Fryatts Way is unlikely to exceed the SOAEL (Significant Observed Adverse Effect Level) and that a change in traffic flow of 25% in the short term is likely to increase road traffic noise levels by approximately 1dB and that a greater traffic increase would develop over a prolonged period (100% in the longer term) rather than overnight thereby lessening its impact. However, the Environmental Health Department states that '*The same will not necessarily be true for 11 and 15 Fryatts Way for which properties I consider there should be a more detailed evaluation to facilitate the development of mitigation to minimise adverse effects on health and quality of life as advised in paragraph 2.24 of the NPSE (Noise Policy Statement for England, Defra, March 2010).*' Their recommendation was to place a planning condition to require further assessment and proposals for mitigating the effects

on the external gardens.

- 3.4 The application documentation (Site Access Design: General Arrangement & Visibility Splays (30 MPH) drawing number A115791/27/C/P001-01, dated 11 19⁴) indicates that the carriageway would be 5.5m wide with 2m footpaths either side. Both properties have windows along the boundary with the access way that would run along the entire length of the houses and rear gardens. Although there is an existing close boarded fence along the northern boundary of no. 11 Fryatts Way, the windows in the flank elevation and conservatory extension are exposed. No. 15 Fryatts Way has a post and rail fence at the front of the property and likewise has windows in the flank elevation and rear conservatory (albeit this is to some extent masked by a shed) that are exposed. As well as vehicular movements associated with a significant quantum of development (indicted in table 6.1 of the Transport Assessment (CD1.18) as being 120 2-way movements at the AM peak hour (0800-0900) and PM peak hour (1700-1800)), there would be pedestrian and cyclist movements. There would also be movements in connection with delivery vans, in particular, but also emergency vehicles. The culmination of these movements and associated disturbance along with disruption from vehicle lights would impinge on the residential amenity currently enjoyed by these properties to an unacceptable degree.
- 3.5 The occupiers of these neighbouring residential properties currently enjoy a reasonable level of peace and tranquillity, particularly to the rear of their properties that back onto the fields that comprise the appeal site. This existing situation is considered to be akin to a rural environment and the proposal would introduce suburban development with all associated pedestrian, cyclist and vehicular movements all passing to and from the development adjacent to their properties. This adverse impact on the amenity of the neighbouring residential occupiers would be contrary to policy OSS4 (ii) of the Core Strategy that requires development not to harm unreasonably the amenities of adjoining properties and policy DEN7 of the DaSA that requires development only to be

⁴ Appendix D: Proposed site access junction, Transport Assessment, Revision 02, June 2021 (CD1.18).

permitted where it is demonstrated that there will be no significant adverse impacts on health and local amenities as a result of noise.

- 3.6 Likewise, paragraph 174(e) of the NPPF states the new development should not contribute to unacceptable levels of noise pollution. Furthermore, paragraph 185 of the NPPF sets out that planning decisions should ensure that new development is appropriate for its location taking into account the likely effect of pollution on health, living conditions and the natural environment. The same paragraph sets out that proposals should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 3.7 The Noise Screening Assessment (CD1.17) accompanying the application does not include a survey of existing noise levels and so it is difficult to assess the change. In any event, it is considered that there would be a noticeable difference that would be perceptible by the occupants.
- 3.8 At this stage, it is not known what the potential mitigation measures might be and it could be that those measures might themselves likewise have an adverse impact on the amenity of the occupiers of these neighbouring residential properties. For example, the provision of acoustic fencing along the boundary could be overbearing and result in a loss of light as well as potentially conflicting with the visibility splays for the driveways of these neighbouring properties. The access to the proposed site would be immediately adjacent to the driveways of the neighbouring properties and whilst this might meet technical requirements the combined effect of the crossovers and accesses could lead to a conflict between different users. Planning Practice Guidance (paragraph: 010, Reference ID:30-010-20190722) states that '*Care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development*'.
- 3.9 Therefore, the proposed single point of access that would facilitate the use of the appeal site for up to 210 residential units would generate noise and

disturbance that will have an adverse impact on the amenity of neighbouring residential occupiers, contrary to local and national policies. No evidence has been provided that this impact can be satisfactorily mitigated.

4.0 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

4.1 It is recognised that the Council is able to demonstrate a 2.89 year supply of deliverable housing site. Paragraph 11d) of the NPPF advises that in this situation planning permission for sustainable development should be granted unless: i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework as a whole. This is often referred to as the 'tilted balance'. However, it does not mean that development with unacceptable impacts should receive planning permission and a judgement on the benefits of the proposal against the adverse impacts is required.

Benefits of the proposal

4.2 From a social point of view, the need to build more homes, both market and affordable, is a benefit of the application and is a matter of some weight. Some economic benefits would result from the proposal during construction and as a result of local expenditure from future occupants. However, these economic benefits are generic or temporary in nature and should be given low to moderate weight.

4.3 The appellant has suggested that new areas of publicly accessible open space and green infrastructure, including a children's play area and new recreational routes, would be provided and represent a benefit. The Council's planning policies do not require play space to be provided and 'green infrastructure'

would be required to mitigate the impacts of the scheme rather than being a benefit. Likewise recreational routes are required to enable necessary pedestrian permeability through the site rather than a benefit.

Harm caused by the proposal

- 4.4 Although the appeal site is at the edge of Bexhill, the public transport and facilities for future occupiers to travel by cycle or walk to employment, local services and facilities are inadequate and more akin to a rural situation. This existing situation would discourage multi-modal journeys and there would be a heavy reliance on the car to undertake daily activities, contrary to paragraph 110 of the NPPF that requires appropriate opportunities to promote sustainable transport modes and '*safe and suitable access to the site can be achieved for all users*'. The use of the private car has the environmental impacts of air pollution, noise and reliance on fossil fuels. The mitigation measures put forward by the appellant are insufficient to provide usable alternative means for most journey types, particularly over the lifetime of the development. Given the nature and scale of the development in this unsustainable location, the adverse environmental and social implications of are considered to have significant weight.
- 4.5 The appeal site comprises green fields, mature trees and hedgerows with a number of protected species on site. The loss of countryside within the rural gap between the settlement of Little Common and Bexhill would have significant adverse effects on landscape and visual amenity. The proposed landscape mitigation would not compensate for the loss of open countryside or the impacts on the landscape character. The landscape impact is considered to be significant and weighs against the environmental objective of protecting and enhancing our natural environment.
- 4.6 The use of the single point of access by car, delivery vans, emergency vehicles, pedestrians and cyclists in connection with up to 210 homes would have an adverse impact on the amenity of neighbouring residential occupiers, particularly no. 11 and 15 Fryatts Way. This would result in a significant impact

on the social wellbeing of the occupants.

4.7 Whilst ESCC has raised no objection to the impact of the proposal on the local road network, National Highways has consistently throughout the application process recommended that the Council do not grant planning permission for the proposal until the impact on the strategic road network has been agreed. There have been ongoing technical discussions between the appellant and National Highways. National Highways are a Rule 6 party and will be presenting evidence on this matter.

4.8 The benefits of the development have been considered and balanced against the adverse impact and the conflicts with the development plan (policies OOS2, OSS3, OSS4, RA3,SRM1, TR2, TR3, EN1, EN3, EN5, of the Core Strategy, DIM2, DEN1 DEN4 and DEN7 of the DaSA) and NPFF (paragraphs 85, 104, 105, 110, 111, 130 and 174). On balance, the adverse impacts would significantly and demonstrably outweigh the housing supply benefits.

Appendix One: Core Strategy: Map 2: Bexhill Inset Diagram

