

Appeal Decision

Inquiry held on 25 - 27 March 2014 and 20 - 21 May 2014

Site visit made on 20 May 2014

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 July 2014

Appeal Ref: APP/L3815/A/13/2208162

Land to the south of Church Lane, Birdham, West Sussex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Seaward Properties Ltd against the decision of Chichester District Council.
 - The application Ref BI/12/04141/OUT, dated 26 October 2012, was refused by notice dated 21 August 2013.
 - The development proposed is 46 dwellings with ancillary parking and open space with access from Church Lane.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Inquiry opened in March 2014, but the Council's introduction of developing information on housing need and supply, in part in response to the government's publication of the Planning Practice Guidance on 6 March 2014, led to an agreed adjournment and further sitting days in May.
3. Shortly after closing the Inquiry, the Council submitted the Chichester Local Plan: Key Policies Pre-Submission 2014-2029 (the eCLP), together with a proposed schedule of modifications, for examination by the Secretary of State. As a result, the Council's Interim Statement on Planning and Climate Change and the Interim Statement on Housing, Facilitating Appropriate Development, which was referred to in the Inquiry, have now been withdrawn.
4. The application was submitted in outline with all matters other than access reserved for future determination. Housing numbers and mix were specified as part of the application. Illustrative layout and landscaping plans were submitted.
5. The Council's original decision referred to five reasons for refusal. However, as set out in the Statement of Common Ground, SOCG, dated 17 January 2014, all but the first reason, relating to the effect on the AONB, were withdrawn or were considered to be able to be addressed through either conditions or the submission of a legal undertaking or agreement.
6. To this end, the appellant submitted a Planning Agreement under the provisions of S106 of the Town and Country Planning Act 1990, dated 28 May 2014 (the S106 agreement). This provided for affordable housing the laying out of the public open space and a wide range of contributions sought by the

Council. Such contributions need to be assessed against the statutory tests of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010. However, in light of my conclusions on the main issue, it is not necessary to apply these tests, as the Regulation only applies where a relevant determination is made which results in planning permission being granted. .

7. In addition to the Council, two further parties were granted status to be represented at the Inquiry. These were the Birdham Village Residents Association (BVRA) and the Chichester Harbour Conservancy (CHC), who have responsibility as the statutory Harbour Authority and manage the AONB on behalf of the constituent local authorities.

Main Issue

8. In light of the submission of the written and oral evidence, I consider that the main issue in this case is whether the appeal site offers a suitable site for housing having particular regard to:
 - the effect on the character and appearance of Birdham and the Area of Outstanding Natural Beauty (AONB),
 - whether the proposal should be regarded as 'major development' and
 - the housing need and land supply in the district

Reasons

Background and Site Description

9. The appeal site comprises two adjoining areas of open land within the village of Birdham, which itself lies within the Chichester Harbour AONB. The first is currently agricultural land and lies to the east; this area is proposed to be developed for housing. The second area of rough grassland lies to the west, adjacent to the village cricket pitch, and is proposed to be managed as ecological and public open space as mitigation for potential recreational impacts on the nearby Chichester and Langstone Harbour Special Protection Area. There are residential properties to the north, east and south of the area proposed for housing, although this area is outside of the defined Settlement Policy Area boundary.
10. The village of Birdham lies to the southwest of Chichester, and is described in the Council's Settlement Capacity Profile (SCP) from 2013, as being a large village with a reasonable range of everyday facilities and reasonable road and public transport links. The historic core of the village lies to the north and west of the appeal site and is centred around the Church of St James, which is Grade 1 listed. Church Lane links this part of the village to the primary road, the A286 that runs through the Manhood Peninsular. Church Lane retains a semi-rural character despite some pockets of development; a character which becomes increasingly rural towards the church. Later development in the village, mostly along Crooked Lane, but with some infill towards the A286, is relatively unremarkable, albeit wide roads and retained trees and hedgerows preserve some sense of openness and village character.
11. The AONB extends over part of the village up to the A286. Beyond this is found a looser knit collection of dwellings and agricultural/horticultural holdings.

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12. The appeal proposal comprises 46 dwellings, to include 18 affordable properties, with a single vehicular and two pedestrian accesses proposed from Church Lane. These would link to a public footpath through the estate to the proposed open space adjacent to the cricket pitch. There is currently no formal public access to the appeal site.

Policy Context

13. The development plan, so far as is relevant to this appeal, comprises the policies of the Chichester District Local Plan First Review (the Local Plan), adopted in 1999, and which covered the period to 2006. While this plan may be considered to be time-expired, the relevant policies were saved and must be considered in light of the position set out in the National Planning Policy Framework, (the Framework).
14. Section 70(2) of the Town and Country Planning Act 1990 provides that in dealing with planning applications the planning authority shall have regard to the provisions of the development plan, so far as material to the application, and to other material considerations. This is reflected in section 38(6) of the Planning and Compulsory Purchase Act 2004, which provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise. One such consideration is the Framework. Therefore, while the starting point for determination of any appeal remains the development plan, the Framework paragraph 215, indicates the importance of consistency with the policies in that document.
15. Local Plan Policy RE1 sets out that the area outside of Settlement Policy Areas is defined as the rural area where development will be restricted. Policy RE4 seeks specifically to conserve and enhance the AONB, it states that any development that would be harmful to the visual quality or distinctive character will not be permitted except in compelling circumstances.
16. At the heart of the Framework is a presumption in favour of sustainable development and it seeks to guide new and emerging development plans in this approach. However, the Framework also provides a context for planning decisions, particularly in areas where development plans are older or do not respond to recent pressures and are potentially out-of-date. In relation to housing, the direction is clear; paragraph 47 explicitly seeks to significantly boost the supply of housing. It goes further to identify, in paragraph 49, that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
17. In this case, the proposal would, on its face, be contrary to Policy RE1. However, while Policy RE1 may in part address the protection of the countryside, a protection recognised in the Framework, it is a restrictive policy as regards the delivery of housing and should be considered against the Framework requirements set out in paragraphs 47 and 49.
18. In terms of Policy RE4, the explicit requirement to enhance the AONB is not consistent with the tests set out in the Framework, albeit the principle of preservation is consistent. The Framework confirms that great weight should be given to conserving landscape and scenic beauty in the AONB¹, which has the highest status of protection in this regard. Furthermore, wildlife and

¹ Paragraph 115

cultural heritage are important considerations in these areas. The Framework goes further² to set out that for major developments, planning permission should be refused except in exceptional circumstances and where it can be demonstrated that they are in the public interest.

19. The Council have recently submitted their eCLP for examination. The weight that can be given to this document is limited by the stage of its preparation, and the confirmation that significant unresolved objections remain, in particular, to the housing supply approach set out in this document; I address this later in this decision.
20. It is therefore necessary to consider whether there is harm arising from this proposal, and accordingly assess that against these policies and, in particular, any material considerations, principally as set out in the Framework. I turn then to the main issue.

The effect on the character and appearance of Birdham and the AONB

21. The Chichester Harbour AONB covers 74 km² with a large part being intertidal. Within an AONB, Section 85 of the Countryside and Rights of Way Act 2000 requires decisions on development proposals to have regard to the purpose of conserving and enhancing the area's natural beauty.
22. While much of its character derives from the tidal creeks and estuaries, an important element of the area is the coastal hinterland. This is acknowledged in the Chichester Harbour AONB Landscape Character Assessment (the LCA), 2005, which highlights its unique blend of land and sea. The further special character and qualities identified in this assessment include its wilderness quality, undeveloped character and tranquillity, rich habitats and wildlife, tree, hedgerows and woodlands, distinctive unspoilt views and specific historical qualities and associations.
23. Key characteristics, set out for the West Manhood Peninsular specifically, include the broad, flat arable landscape with small, hedged paddocks centred around the villages, dispersed modern roadside development along the A286 but with a historic north south road and settlement pattern. The LCA concludes that the area overall retains a largely rural undeveloped character.
24. In considering the character of the AONB, the appellant initially provided a Landscape Character and Visual Assessment (LCVIA)³, which was updated to reflect changes to the proposal and peer reviewed by the appellant's landscape witness to the Inquiry. None of these assessments referred to either the LCA or its associated AONB Management Plan from 2009. I consider this to be a significant oversight, although not one that is necessarily fatal to the scheme as the appellant's LCVIA sought to assess the site in the context of the local character of the village and the surrounding landscape.
25. The baseline conditions set out in the LCVIA drew on the Natural England Landscape Character Area – The South Coast Plain and the West Sussex Landscape Character Assessment (2003) for Chichester Harbour / Pagham Harbour. The LCVIA concluded a neutral or a low/slight adverse impact on the character and visual appearance for all parts of the area other than the development site itself. The appellant relies, to a certain extent, on support

² Paragraph 116

³ Lizard Landscape Design

from the County Landscape Architect, whose response to the planning application, while questioning elements of the LCVIA, found the conclusions to be reasonable.

26. The Council and BVRA approach was to focus on the key characteristics and quality of the AONB and assess the contribution of the village and the appeal site to these; I find this a more compelling approach, albeit their conclusions differed slightly. In addition, both these parties specifically challenged the methodology of assessment informing the appellant's overall conclusions.
27. As part of the evidence base which subsequently informed the eCLP, the Council commissioned the Chichester District AONB Landscape Capacity Study (LCS)⁴ in 2009. This study sought to assess the physical and environmental constraints on development in the AONB with a view to identifying the capacity of the landscape to accommodate future strategic development. For Birdham a number of character areas were defined. The appeal site falls within the Northern Settlement Edge area, which was assigned a medium landscape capacity for development. Notwithstanding this, the Council and BVRA landscape witnesses both considered that their more site specific assessments should outweigh this finding, and indeed that of the County Landscape Architect, while further arguing that part of his response suggested that the LCVIA may not stand up to scrutiny.
28. I have had regard to the submitted assessments and the elaboration on matters and conflicting views expressed by the landscape witnesses from three of the parties. I also carried out both unaccompanied and accompanied site visits to Birdham and the surrounding area, including Birdham Pool and the marina area.
29. There is a difference in the character of the village along Church Lane and particularly around the church itself, and the remaining parts of Birdham. The church and the small village green opposite bear all the hallmarks of the cultural history, tranquillity and undeveloped rural character so characteristic of the AONB hinterland. Furthermore, Church Lane provides a key route into the AONB, linking, via Court Barn Lane, to the historic Birdham Pool and the wooded creeks.
30. The LCA identifies the small historic core centred around the church, and the dispersed settlement pattern, open spaces and rural character here is an important characteristic of the historic settlements of the AONB. This is supported by the open spaces of the appeal site and cricket pitch, albeit the latter is noted as introducing a slightly more formal and, with the pavilion, modern addition to the area.
31. The Council and BVRA argue that the appeal site forms part of the radiating field system and small scale enclosures, noted as being particular to Birdham and therefore contributing to the setting of this historic core. While I accept that this is likely to have once been the situation, 20th century development has curtailed the field pattern to the south and east, and with development on three sides, the part of the appeal site proposed for housing has limited visual links to the more open agricultural areas to the north. Nonetheless, the openness and separation from the houses on Cherry Lane and Walwyn Close,

⁴ Hankinson Duckett Associates

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- as provided by the cricket pitch and appeal site, are important in retaining the rural and tranquil setting of the historic core.
32. Furthermore, on entering Church Lane from the A286, the dispersed north-south settlement pattern is clearly retained. In this context, development at depth behind the frontage, as proposed in this scheme, will erode this identified characteristic of the hinterland's relationship with the historic quays and harbour.
 33. A large development of 46 houses clearly has the potential to materially harm the character and appearance of the AONB and the village. However, the appellant argues that the scheme has been developed through a process of negotiation and iteration, with improvements made to the indicative layout and landscaping to address concerns.
 34. Although submitted as an outline scheme, the illustrative landscaping plans were accepted as being relatively comprehensive and the appellant agreed that they could be secured in principle through a condition. These plans limit the width of the access off Church Lane and provide for screening as well as supporting planting on the existing hedge boundaries to limit the visibility of the scheme. Furthermore, the design of the proposed additional pavement link would limit the perceived urbanisation of this part of Church Lane somewhat.
 35. While the change to the site itself would be profound, the nature of the flat surrounding landscape and the enclosing residential development means that public views of the site proposed for housing would be limited. Nonetheless, they would include views from the churchyard and occasional views between properties or in gaps in the Church Lane hedgerow. The cricket pitch is not formally publically accessible, but clearly during use players and spectators would be able to view the development. Furthermore there would be a number of local residents who would experience a marked change in their outlook.
 36. To conclude on the effect on the village and the AONB, a decision was taken on its designation to include the villages within the hinterland. A key characteristic is the relationship between these villages and the harbour. Accordingly, villages such as Birdham, cannot be discounted as contributing to the overall character of the AONB. In this case, Birdham is specifically identified as one of the main surviving historic settlements.
 37. Thus any development proposed in or around the village, where it would lie within the AONB, must be carefully assessed in terms of its specific position and its relationship to existing settlement patterns and landforms as well as its impact on both the character and the visual qualities of the AONB. In this case, this area is a valued component of the setting of the village. This is demonstrated by reference to it, for example, in the SCP, where its contribution to the open, rural character is noted.
 38. Development at depth here would erode the openness of the area, increase urbanisation and undermine the transitional character of this northern part of the village. While visual harm may be moderated somewhat by the proposed landscaping and the existing enclosing residential development, to my mind, the scale of development proposed would result in harm to the setting of the historic core of the village, and to the character of the AONB. My findings are consistent with those of previous Inspectors considering smaller scale

development along Church Lane⁵, albeit the strategic policy context is different now. Overall, I consider that the proposal would conflict with Policy RE4 and paragraph 115 of the Framework in this regard.

Whether the proposal should be regarded as 'major development'

39. The harm I have identified must be considered in terms of the scale of the development and whether it should be viewed as major development. I consider that this is not solely a function of the effect it may have, albeit the scale of the development is relevant in terms of the potential for impact. Nor can there be a simple overarching definition, such as that set out in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010.
40. There is no definition of major development in the Framework, and the Planning Practice Guidance, published in March 2014, sets out that whether a development can be considered major will be a matter for the relevant decision taker, taking into account the proposal in question and the local context.
41. The Council officers originally concluded that it should not be considered as a major development. In their report they commented on a Secretary of State decision near Tetbury⁶, where 39 dwellings in the AONB were not considered to represent major development, although I note in this case there was common agreement between the parties on this matter. The report also refers to the scale of the scheme being local rather than strategic and the lack of a requirement for Environmental Impact Assessment. This conclusion is now challenged by the Council and the Rule 6 parties.
42. The officers' approach was reflective of a number of other Inspector or Secretary of State decisions to which I was referred, albeit there seems to have been a range of criteria considered to reach conclusion on this matter. That focussing on schemes being of national rather than local scale is not one that I support, nor is it supported by the most recent guidance. Indeed the most recent Secretary of State decisions⁷ at Handcross, where 75 or 90 houses and a care home were both found to be major development, considered that 'major' should be taken on its natural meaning, and refers to the development rather than its effects.
43. The Council and Rule 6 parties argue that 46 houses in a village the size of Birdham and within such a small AONB should properly be considered major development. In the context of the Planning Practice Guidance, I consider that it is reasonable to consider the scale of development against the capacity of the local area for development. Thus a direct comparison with scale of the Tetbury decision, 39 houses, or the Handcross decision, 75 houses, would not be correct and an understanding of the context is necessary.
44. In this case, I consider that a development of this scale, in a village in an AONB, and particularly within the open and semi-rural, transitional part of the village adjacent to its historic core, can reasonably be concluded to be major development. In light of this conclusion the development must be considered against Framework paragraph 116. This sets out an assessment for major development that includes the need for the development, the cost of, or scope

⁵ APP/L3815/A/00/1050393 and APP/L3815/A/04/1157113

⁶ APP/F1610/A/12/2173305

⁷ APP/D3830/A/13/2198213 and 2198214

for developing elsewhere and the detrimental impact on the environment, landscape or recreational opportunities and the extent to which that could be moderated.

45. The appellant considers that, even were I to conclude it to be major development, the housing supply situation in the district and the mitigation proposed within the scheme represents such exceptional circumstances.

The housing need and land supply in the district

46. The Council's initial position set out in both the Officer's report and in the SOCG was that they could not demonstrate a five year housing land supply (HLS). However, there was a difference in the extent of that shortfall between the appellant and the Council, relating in part to the use of the South East Plan targets as well as specific elements of the supply assessment. In the run up to the Inquiry, the Council responded to the Planning Practice Guidance and revised their assessment using what they set out as their objectively assessed housing needs (OAHN).
47. Thus an initial annual target of 480 dwellings per annum (dpa), or 410 for that part of Mid-Sussex not falling within the South Downs National Park, was then revised to a figure of 529 dpa, based on the most recent ONS sub-national population projections, adjusted for migration trends. The Council set out in evidence that this figure needed to be considered in light of the constraints, citing the fact that approximately 75% of the district is designated as National Park or AONB. This led to the target promoted in the eCLP of 410 dpa, with the Council acknowledging that this was less than the OAHN, but suggesting that meeting such a target would not be realistic.
48. They argued that while the figure of 529 dpa may be the appropriate figure for the purposes of this appeal, it had not been tested nor had it been moderated against relevant constraints. The figure of 410 dpa, they suggest, had been subject to moderation, and while the weight that can be given to it is limited as it too has not been tested through examination, it could provide some basis for assessing the potential scale of the current five year HLS position. Their assessment therefore ranged from 3.9 to 4.1 years respectively.
49. Under cross-examination the Council accepted that the 529 dpa figure, being trend based, could be a constrained figure. Furthermore, in light of the most recent projections from their consultants⁸, which considered 530-650 dpa as the likely range, they accepted it could be a minimum figure.
50. The appellant, using the figure of 529, which they firmly considered was a minimum figure, set out their own assessment of the five year HLS. While challenging the incorporation of some elements of supply and the level of shortfall, the five year housing supply was considered to be between 3.3 and 3.7 years.
51. A number of Inspector and Secretary of State decisions were provided to the Inquiry, which detailed the emphasis placed on the five year HLS. There is no element within the Framework that deals with differing weight to be applied to different levels of undersupply, and it is not for me to reach final judgement on these matters in this case, or indeed to assess in detail whether the approach to constraint in the eCLP is sound. It is necessary for me to consider the

⁸ G L Hearn – April 2014

weight in favour of the scheme from the Council's acceptance that they could not demonstrate a 5 year HLS.

52. What is clear is that the Council have accepted that they have failed to meet their housing target for a number of years, and it is common ground that the 20% buffer⁹ needs to be applied to any assessment. It is also clear that the Planning Practice Guidance now identifies that in circumstances where the Local Plan evidence is outdated and emerging plans carry insufficient weight, the latest full assessment of housing needs should be considered. I note that the guidance refers to the need to consider this assessment in light of relevant constraints.
53. The Council accepted that the housing requirement figure of 529 may be considered a minimum, and that there is a risk that their constraints led requirement of 410, as set out in the eCLP, may also need to rise. The Council cannot confirm a sufficient five year supply of housing to meet even the lowest figure and I consider that this not only confirms that significant weight arises in favour of the proposal, but also indicates the potential for pressure on the Council to develop within the areas of constraint to meet their housing needs.
54. I consider this element in more detail later in carrying out the planning balance and the relevant tests set out in the Framework.

Other Considerations

55. In addition to the positive weight arising from the open market and affordable housing proposed, the extent of which I deal with below, the appellant considers that there would be positive biodiversity and recreational benefits from the management of the public open space and economic gains from the housing, including the New Homes Bonus and Council Tax revenue.
56. I consider that the principal purpose of the public open space would be for mitigation for potential recreational pressures on the nearby Special Protection Area, nonetheless, some weight arises from the provision of increased public access, which would afford new perspectives of the listed church.
57. I attach some weight to economic gains from construction, but only limited weight to the potential for increased Council revenue.

Other Matters

58. I am conscious of the very considerable concerns of local residents regarding flood risk and foul water drainage associated with this site. There is evidence on the ground of problems, with a pipe and pump system operating across the appeal site and works on drains to the west of the site. However, the appellant submitted a revised Flood Risk Assessment, which was accepted by relevant statutory agencies and the Council.
59. The proposal for surface water management does not include any significant infiltration drainage, but instead would collect flows and pipe them to a less constrained part of the drainage network. Utilising flow control and discharge should be limited to at or below existing rates. I am satisfied that full details to ensure a practical and well managed system could be addressed through a reserved matters application and conditions.

⁹ Framework paragraph 47

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60. Regarding foul flows, I note that Southern Water have accepted the principle of a restricted flow level from the site. Neither they nor the Council challenge the ability of the Siddlesham Treatment Plant to manage these flows.
 61. In addition to these concerns, some matters in relation to highway safety on Church Lane were raised. I accept that Church Lane has limited pavements, indeed that, in part, contributes to its semi-rural character. This does mean that the road operates as shared surface. The proposal would increase traffic, albeit predominantly using the stretch of road from the A286 to the site entrance, which would have a footway, and would introduce additional turning movements off the lane.
 62. A Transport Planning Statement and Stage 1 Road Safety Audit were prepared for the original application. I noted that there were only a limited number of traffic movements along Church Lane during my visits, although I am conscious that this represents only a snapshot in time. I consider that there would not be material harm to highway safety associated with additional traffic flow and am satisfied that sufficient visibility splays could be achieved.

Planning Balance

63. The Framework sets out a presumption in favour of sustainable development and, in paragraph 47, seeks to boost significantly the supply of housing. The appellant argued that this proposal represents sustainable development. However, while the Council accepted that it would be sustainably located, they, and the Rule 6 parties, considered that harm to the AONB means that it fails to meet the social, economic and environmental dimensions required to make a development sustainable.
64. The development plan is of some age and the Council have accepted that, in accordance with paragraph 49 of the Framework and in absence of a five year HLS, Local Plan Policy RE1 can be considered to be out-of-date as regards the restriction it imposes on housing delivery. The Framework identifies in paragraph 14 that, where the development plan is out-of-date permission should be granted unless specific policies of the Framework indicate development should be restricted.
65. In this case, I have identified the development as being major development within an AONB and, in addition to the great weight given to the conservation of their landscape and scenic beauty, paragraph 116 of the Framework states that permission for major development should be refused except in exceptional circumstances. Three criteria are set out to assist in assessing such circumstances: need; the cost of and scope for developing elsewhere; and detrimental impact on the environment.
66. I have addressed the impact on the AONB above. In support of exceptional circumstances, the appellant considered that the lack of a five year HLS indicates that there is a pressing need for new open market and affordable housing, with harm to both the local economy and social fabric from the existing shortfall. To support their position, the appellant noted that the site, and others in Birdham, were identified in the Strategic Housing Land Availability Assessment (SHLAA). Furthermore, land in Birdham had been identified in previous development plan allocations and a housing provision has been set out in the eCLP for 50 houses. This, it was argued, represented an implicit commitment by the Council to release land in the AONB for housing.

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67. Turning to the SHLAA produced in March 2013, the document acknowledges that it informs the evidence base but does not indicate that a site will be allocated or successfully obtain planning permission. Nonetheless, it identifies potential sites for housing and nine sites¹⁰ were recorded in the parish of Birdham. Three sites, including the appeal site¹¹, were identified in the AONB. Of these, one, an extension to the west of the village, has received permission as an exception site for affordable housing¹². Of the sites outside of the AONB, one received permission on appeal for 30 dwellings¹³, and another has a resolution to grant permission for 27 dwellings¹⁴.
68. I give little weight to the fact that the site is identified in the SHLAA, as this document acknowledges the need for further assessment and a review of settlement boundaries, although it can be considered indicative that the Council are not discounting the option of allocating land within the AONB for housing. Furthermore, the Council commissioned the LCS to assess the potential for housing sites in the AONB. Nonetheless, the Council stated in the Inquiry that their intention is to seek avoid housing in the AONB, or restrict it to limited amounts of development within or in close proximity¹⁵, as they considered the AONB as one of the constraints leading them to propose a housing target in their eCLP, which is below their OAHN.
69. In this context, the SCP identifies Birdham as a Service Village with a net local housing need for the parish of 32. It concludes, taking account of the village size, range of facilities and relative accessibility, as well as the capacity of the Siddlesham Treatment Works, that an indicative housing figure of 50 dwellings would be appropriate for the parish.
70. This is set out in the eCLP in Policy 5, Parish Housing Sites 2012-2029. I note the view of some parties that the recent permissions at Rowan Nursery, Tawny Nursery and the affordable housing exception site exceed this indicative figure. However, I was informed that none of these developments have yet been constructed and delivery of the housing cannot yet be assured. Furthermore, the Council accepted that this was only an indicative figure.
71. The appellant argued that the figure of 50 relied on the eCLP overall target of 410 dpa, a figure which they contended would inevitably rise as a result of their critical assessment of the Council's approach in the plan of not meeting their OAHN. This matter is clearly for the Local Plan examining Inspector to conclude on. Nonetheless, I accept that the indicative figure of 50 should not be considered as a maximum, and where there is a sustainable option to develop beyond that, considering environmental as well as infrastructure restrictions, then such opportunities should not be restricted.
72. Drawing these matters together, for affordable housing I note that the proposal meets the policy expectations. I consider that some weight arises in favour of the scheme, although whether this represents a need for the proposal here is tempered somewhat by the level of local need. This is identified in the SCP as only 32 units, and the Council's indication at the Inquiry was that there were

¹⁰ Of these three sites were considered to have no potential for development

¹¹ For 38 dwellings

¹² Council ref 13/1391/FUL

¹³ APP/L3815/A/13/2199668

¹⁴ Council ref 13/00284/FUL

¹⁵ Appendix 2 to the April 2014 Cabinet Meeting

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- only 22 on the housing register, which was not challenged by the appellant. Much of this need would be addressed in recent permissions.
73. In relation to open market housing there is clearly a pressing need for housing in the district, but this must be considered against the high level of protection offered to AONBs. That there is need and that there is limited land to deliver it may imply there will be a need to consider land within the AONB. However, the strategy promoted in the eCLP¹⁶, is to focus development outside of the designated areas, in Chichester and then the main settlement hubs, with relatively small amounts of development for delivery in the service villages. I accept that the weight I can give to this strategy is limited in terms of the progression of the plan; nonetheless, the criteria in the Framework require a positive assessment of the scope for developing elsewhere outside the designated area.
74. In absence of a detailed assessment, the appellant suggested that there is limited scope for short-term housing delivery on the Manhood Peninsular, although I note that much of the area lies outside of the AONB and includes two of the four Settlement Hubs identified in the eCLP.
75. There is a need for housing in the district and the Council are currently promoting a strategy that would not meet their OAHN. Some inference can therefore be drawn in suggesting that there will be a need for housing within the AONB. However, on the evidence before me, I cannot conclude that there is no scope for alternatives for delivery of this scheme outside of the AONB.
76. Turning then to the overall planning balance, I have identified harm to the character and appearance of the village and the AONB. The proposal would therefore conflict with Local Plan Policy RE4, in that it seeks to conserve the visual quality or distinctive character of the AONB. It is accepted that Local Plan Policy RE1 is out-of-date and paragraph 14, subject to the assessment set out in paragraph 116, of the Framework applies.
77. I have found harm, but have acknowledged that weight arises in favour of the scheme from the pressing need for housing in the district, albeit that the need for this development within the AONB has not been demonstrated. The appellant has referred me to two Secretary of State decisions, where major housing development in the AONB has been allowed, with exceptional circumstances arising, in part, from the lack of a five year HLS¹⁷.
78. In the Berrells Road decision, while some harm was identified to the AONB, the Inspector considered that there would be also be landscape benefits from the scheme. Furthermore, the Council clearly recognised that meeting the needs of the district would require development in Tetbury and consequently within the AONB. In the Handcross decision, the Council accepted that the development of the land would not have a significant effect on the wider landscape and the Inspector and Secretary of State concluded a limited effect overall on the landscape quality of the AONB. I therefore find that these decisions differ materially from that before me, which, in any case, must be considered on its own merits.
79. Thus when considering this scheme against the criteria set out in paragraph 116 of the Framework, on the evidence before me, I consider that the need for

¹⁶ Policy 2

¹⁷ APP/D3830/A/2196213 and 2198214 (Berrells Road) and APP//F1610/A/11/2165778 (Handcross)

development in the district exists, but in light of the harm I have identified, I consider that this does not amount to exceptional circumstances.

Conclusions

80. There are some positive elements to the proposed site for development of housing. I have noted significant weight arising in favour in relation to the provision of open market housing, and some weight associated with affordable housing, recreational and economic benefits. In addition, it is visually removed from the open countryside as a result of neighbouring housing, and the developers have sought to moderate the harm through layout and landscaping.
81. However, the scale of this proposal is such that I have found material harm to the character and appearance of the village and the landscape character of the AONB. While I have acknowledged there is a pressing need for more housing, I have found that this would not represent the exceptional circumstances necessary to outweigh the presumption set out in the Framework that permission should be refused for major development in the AONB.
82. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Mike Robins

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Morgan of Counsel	Instructed by the Principal Solicitor, Chichester District Council
He called	
Robert Davidson BA(Hons) MSc MRTPI	Principal Planning Officer – Chichester District Council
Christine Marsh BA(Hons) DipLA CMLI	Landscape Architect – Hankinson Duckett Associates
Ian Ellis BA MRTPI	Southern Planning Practice Ltd

FOR THE APPELLANT:

Mary Cook of Counsel	Instructed by Strutt and Parker
She called	
Stephen Dale DipLA CMLI	Landscape Architect – ACD Landscape Architects
Paul Collins BA(Hons) DipTP MRTPI	Associate Planner – Strutt and Parker

FOR THE BIRDHAM VILLAGE RESIDENTS ASSOCIATION

Guy Williams of Counsel	Instructed by the Birdham Village Residents Association
He called	
Gary Soltis BSc(Hons) DipLA MIHort MLI	Landscape Architect – Soltys Brewster Consulting
Alan Simmonds BSc(Est Man) FRICS	Planning Consultant

FOR CHICHESTER HARBOUR CONSERVANCY

Stephen Lawrence BSc(Hons) DipTP DipUD MRTPI	Chichester Harbour Conservancy
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INTERESTED PERSONS:

Richard Hill	Chichester District Council for the Protection of Rural England
Mr K Wright	Local resident
Mr G Cambell	Local resident
Mr L Pocock	Local resident and Chairman of BVRA

DOCUMENTS

- 1 Council Notification letter – 25 February 2014
- 2 Chichester Harbour AONB Landscape Management Plan
- 3 Judgement in the case of South Northamptonshire Council v SSCLG and Barwood Homes [2014] EWHC 570 (Admin) 10 March 2014
- 4 Secretary of State Appeal Decision APP/F1610/A/12/2173305
- 5 Opening Statement on behalf of Seaward Properties Ltd, (Appellants)
- 6 Opening Statement on behalf of Chichester Council
- 7 Written Statement – Mr Richard Hill CPRE
- 8 Complete Appendix 4 - Proof of evidence Mr Dale (Appellant)
- 9 Chichester Harbour AONB Management Plan
- 10 Supplementary 5 year Land Supply submitted by the Appellant
- 11 Written Statement – Mr Wright
- 12 Chichester Harbour Conservancy response to pre-application enquiry
- 13 Chichester Harbour Conservancy response to Crooked Lane application
- 14 Suggested conditions
- 15 Written Statement – Mr Cambell
- 16 Agenda, minutes and appendix – Chichester Council Cabinet Meeting 24 April 2014
- 17 GL Hearn Report - extract
- 18 Judgement in the case of Gallagher Homes Ltd and Lioncourt Homes Ltd v Solihull Metropolitan Borough Council [2014] EWHC 1283 (Admin) 30 April 2014
- 19 Secretary of State Appeal Decision APP/D3830/A/13/2198213
- 20 GL Hearn Report - extract
- 21 Planning Practice Guidance ID 8-005-20140306
- 22 Agreed conditions
- 23 Closing Submissions – Birdham Village Residents Association
- 24 Closing statement – Chichester Harbour Conservancy
- 25 Closing Submissions – Chichester District Council
- 26 Closing Submissions – Seaward Properties Ltd (Appellant)