



Costs Decision

Site visit made on 23 May 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2023

Costs application in relation to Appeal Ref: APP/M3835/W/22/3309942 113 Salvington Road, Salvington, Worthing BN13 2JD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Ms E Taylor-Moore of NLC Durrington Freehold Limited for a full award of costs against Worthing Borough Council.
 - The appeal was against the refusal of planning permission for development described as 'demolition of Durrington New Life Church and erection of nine apartments across three floors (resubmission of approved application No. WDM/0271/18).'
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Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. The national Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs can only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The PPG advises that cost awards may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal).
3. The applicant is seeking a full award of costs on substantive grounds, as they consider that the Council refused the planning application on grounds which were not relevant in the determination of the application and ignored key material considerations.
4. The appeal scheme seeks to provide 2 new dwellings and would materially change the appearance of the consented scheme. I disagree with the appellant that the proposal is for minor alterations. I also find that the Council has accurately described the character of the area within their delegated report.
5. The appellant alleges that the Council has misinterpreted the Daylight/Sunlight report. However, loss of daylight or sunlight does not form part of the reason for refusal and I do not consider that the Council's comments on this matter constitute unreasonable behaviour that has resulted in unnecessary or wasted expense, as described in the PPG.
6. I acknowledge that only a limited number of objection letters were received and none on the grounds of living conditions. However, I have identified clear harm in respect to both main issues and consequent policy conflict. The lack of objections does not alter my findings on the main issues.

7. The applicant considers that that the Council is required to give greater weight to the National Planning Policy Framework (the Framework) than the development plan due to the Council's recent under delivery of housing. As can be seen from my appeal decision, I found that the proposed development would harm the character and appearance of the area and the living conditions of neighbouring residential occupiers. I also found that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
8. Overall, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme. I have found that the Council had reasonable concerns about the impact of the proposed development, which justified its decision. I also found harm and conflict with the development plan, taking into account all material considerations, and I dismissed the appeal accordingly. As a result, I cannot agree that the Council has acted unreasonably in this case.

Conclusion

9. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, the application for an award of costs is refused.

A James

INSPECTOR



Appeal Decision

Site visit made on 23 May 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2023

Appeal Ref: APP/M3835/W/22/3309942

113 Salvington Road, Salvington, Worthing BN13 2JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms E Taylor-Moore of NLC Durrington Freehold Limited against the decision of Worthing Borough Council.
 - The application Ref AWDM/1109/22, dated 27 June 2022, was refused by notice dated 30 September 2022.
 - The development proposed is described as 'demolition of Durrington New Life Church and erection of nine apartments across three floors (resubmission of approved application No. WDM/0271/18).'
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Decision

1. The appeal is dismissed.

Application for costs

2. A cost application has been made by NLC Durrington Freehold Limited against Worthing Borough Council. This is the subject of a separate Decision.

Preliminary Matters

3. I have omitted reference to 'Durrington New Life Church' from the site address, as the church has been demolished. I consider that the address used in the banner heading above provides a more accurate description, which corresponds with that used on the appeal form. I have taken the proposal description from the application form, which I have replicated in the banner header above. I note there is a letter missing from the previously approved application no. and this should read AWDM/0271/18.
4. Following determination of the planning application, the Worthing Borough Council Local Plan 2020-2036 (LP) was adopted on 28 March 2023. The LP supersedes the Worthing Core Strategy 2011 and the saved policies of the Worthing Local Plan 2003, both of which are referenced in the reasons for refusal. I am required to determine the appeal on the basis of the adopted development plan and therefore the superseded policies are not relevant to the determination of this appeal.
5. The Council referenced Policy DM5 of the Worthing Borough Council Submission Draft Local Plan 2020-2036 in the decision notice and provided a copy of this policy with the appeal questionnaire. There are minor changes to this policy in the adopted version of the LP. The Council provided an update on the status of the LP and included a copy of this policy within their appeal statement. The

Council has also provided an update on their five year housing land supply position and latest Housing Delivery Test. The appellant has had the opportunity to comment on these matters and I have taken any comments received into consideration.

6. Planning permission has been granted for a part 2 storey and part 3 storey building on the site, comprising of 7 nos. 2 bed apartments with 7 parking spaces (ref: AWDM/0271/18 and varied by AWDM/2045/20). I noted on my site visit that works have been substantially completed.
7. Amended plans have been submitted with the appeal. As the amendments relate to the annotation of dimensions only, my acceptance of these plans would not prejudice the Council or other interested parties. I have therefore taken them into consideration during my determination.

Main Issues

8. The main issues are the effect of the proposed development on (i) the character and appearance of the area; and (ii) the living conditions of neighbouring residential occupants, with particular regard to outlook and privacy.

Reasons

Character and appearance

9. The appeal site lies in a prominent location on the corner of Salvington Road and Greenland Road. The area is predominantly residential in character, although there is a large telephone exchange building opposite the site. The telephone exchange building has a flat roof and is not dissimilar in height to the 3 storey part of the appeal property. Development along Salvington Road consists of 2 storey and 3 storey buildings, of a variety of architectural styles and periods. Immediately adjacent to the site on Salvington Road is a pair of 2 storey semi-detached dwellings, which have a pitched roof.
10. With the exception of the corner part of the appeal property, Greenland Road is characterised by single and 2 storey dwellings that vary in design but are predominantly modern in character. Opposite the appeal site on Greenland Road is a row of 2 storey flat roof terraced properties. To the south of the site is a narrow unmade track, which provides access to the rear of properties that front onto Salvington Road. Adjacent to this track is 3 Greenland Road (No 3), which is an end of terrace 2 storey property, which is set back behind the remainder of the terrace and has a flat roof. The existing building on the appeal site steps down in height and responds to the adjacent 2 storey developments on both roads.
11. I acknowledge that 3 storey buildings are not uncommon on Salvington Road. However, Greenland Road has a far more low-key character and the appeal property is already the most prominent building on this road. The proposal seeks to add an additional storey to the southern wing, which would be slightly below the height of the existing 3 storey part of the appeal property. The southern wing is set further forward in the plot and is already taller than the adjacent flat roof property. The proposal by reason of its size, height and siting would appear out of scale and overly dominant in relation to the neighbouring property.

12. The proposal would not be significantly higher than the pitched ridge of the neighbouring terrace on Greenland Road. However, the pitched and hipped roof of the neighbouring terrace minimises its bulk at roof level. In contrast, the proposal would appear significantly bulky and its large 3 storey mass would appear unduly prominent and discordant in the context of the more modest development along Greenland Road. I acknowledge that the proposal would not increase the overall footprint of the building and the same space would be retained around the building. Nevertheless, the proposed development would appear out of scale with neighbouring buildings and it would harm the character and appearance of the street scene.
13. Furthermore, the appeal property currently has a blank 2 storey side elevation adjacent to No 3. As No 3 is set further back from the street than the appeal property, the blank elevation is prominent within the street scene. The proposed additional storey would significantly increase the extent and prominence of this blank façade, which would be out of keeping and harmful to the character and appearance of the area and would equate to poor design. While the proposal would utilise design techniques already found on the building, this would not mitigate the visual harm.
14. The proposal also seeks to provide an additional storey above the eastern section of the building, adjacent to 111 Salvington Road (No 111). This extension would be set in from the existing front and side elevations, which would help to minimise its overall visual appearance. The set back from the side elevation would also ensure that this part of the scheme relates well to the adjacent 2 storey development on Salvington Road.
15. Parking is already a prominent feature on both road frontages and the proposal would create a further 2 parking spaces. The parking area that would be accessible from Greenland Road would extend across the full width of the southern projection. There would also be an increase in hardstanding along the Salvington Road frontage. The increase in hardstanding would be at the expense of soft landscaping. As a result, the parking provision would appear visually dominant, creating a hard appearance that would harm the character and appearance of the street scene.
16. For the reasons given above, I conclude that the proposed development would result in significant harm to the character and appearance of the area. It would conflict with Policy DM5 of the LP. This policy requires among other things that new residential development respects and enhances the prevailing character of the area; enhances the local environment by way of its appearance and character, with particular attention being paid to the architectural form, height, scale, landscaping and impact on the street scene; achieves high quality design; and, makes a positive contribution to the sense of place, local character and distinctiveness of an area.
17. The proposal would also fail to comply with the National Planning Policy Framework (the Framework), which among other things seeks to achieve high quality, well-designed places and developments that are sympathetic to local character, including the surrounding built environment.

Living conditions

18. The existing 2 storey southern wing of the appeal building extends almost the full depth of the garden of the neighbouring property at No 111. While the southern wing is set away from the boundary with No 111, it is prominent from when viewed from the neighbouring property. The additional storey, by reason of its height and siting would increase the prominence of the appeal property and it would have an overbearing and enclosing effect, which would be detrimental to the living conditions of occupants of No 111.
19. No 3 is set further back in its plot than the southern wing of the appeal property. The provision of an additional storey on the southern wing would have a significant enclosing effect on the front of No 3 and it would appear oppressive and unduly overbearing to the occupants of this property.
20. The appeal site is located within a built up area where residential properties experience a mutual level of overlooking. The window arrangement on the east elevation of the southern wing would be similar to that on the floor below, with 2 windows shown to be obscure glazed, which could be secured by condition. The proposed development would not result in a detrimental level of overlooking or perception of overlooking to the occupiers of the neighbouring properties on Salvington Road, when compared to the consented scheme. Given the distance between the appeal site and the terrace on the opposite side of Greenland Road, the proposed development would not result in a harmful loss of outlook or privacy to the occupiers of this terrace.
21. While the issue of daylight and sunlight is raised by both parties, loss of daylight or sunlight does not form part of the reason for refusal. Based on the evidence before me and my site visit, I have no reason to reach a contrary conclusion to the Council on this matter.
22. For the reasons given above, I conclude that the proposed development would result in significant harm to the living conditions of neighbouring residential occupiers in respect of outlook. The proposal would conflict with Policy DM5 of the LP, which requires among other things that new development should not have an unacceptable impact on the occupiers of adjacent properties in respect to outlook. Furthermore, the proposal would be contrary to the Framework, which requires that new developments promote well-being and provide a high standard of amenity for existing and future users.

Other Matters

23. Whilst only a limited number of objections were received to this scheme from local residents and no concerns were raised by local residents in respect to living conditions, this does not alter my findings on the main issues.

Planning Balance

24. At the time the planning application was determined, the Council was unable to demonstrate a 5 year housing land supply (5YHLS). Following adoption of the LP, the Council can now demonstrate a 5YHLS. However, the latest Housing Delivery Test results show that the Council delivered 35% of its housing requirement in the last 3 recorded years, which is a substantial under delivery. Consequently, the provisions of paragraph 11 d) (ii) of the Framework apply. This sets out that where the policies which are most important for determining

the application are out of date, 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 the Framework taken as a whole.

25. Notwithstanding the shortfall in housing delivery, I accord the conflict with Policy DM5 of the LP considerable weight as this is a recently adopted policy that is consistent with the Framework.
26. The proposal would align with the objectives of the Framework, which seek to significantly boost housing supply, promote the effective use of land and provide housing within locations that have good accessibility to services/facilities and public transport links. The provision of 2 new dwellings would make a small contribution towards the Council's housing land supply. There would be economic investment from the construction of the development and future residents would help to support local services and facilities. The proposal would also make efficient use of a brownfield site, which would have environmental benefits.
27. The appellant asserts that the economic benefits from tax income and the New Homes Bonus are material considerations for this appeal. Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that a local planning authority must have regard to a local finance consideration as far as it is material. The national Planning Practice Guidance makes it clear that it is not appropriate to make a decision based on the potential for a proposal to raise money for a local authority. Accordingly, I ascribe little weight to these suggested benefits.
28. Overall, the social, economic and environmental benefits of the scheme carry limited weight in favour of the development. However, against these benefits, there would be significant harm to the character and appearance of the area and the living conditions of neighbouring residential occupiers.
29. Given the harm I have identified above, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole and therefore the presumption in favour of sustainable development does not apply in this case.

Conclusion

30. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no other material considerations, including the Framework, that would outweigh that conflict. Therefore, I conclude that the appeal should be dismissed.

A James

INSPECTOR



Appeal Decision

Site visit made on 23 May 2023

by **A James BSc (Hons) MA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/M3835/W/22/3310953

1 Eastcourt Road, Gaisford, Worthing, West Sussex BN14 7DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs F Taheri Westwood against the decision of Worthing Borough Council.
 - The application Ref AWD/1399/22, dated 16 August 2022, was refused by notice dated 20 October 2022.
 - The development proposed is the extension and conversion of a disused garage to form a residential studio.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's decision, the Worthing Borough Council Local Plan 2020-2036 (LP) was adopted on 28 March 2023 and now forms part of the development plan. The new LP supersedes the Worthing Core Strategy (2011) and the saved policies from the Worthing Local Plan (2003), both of which are referenced in the reasons for refusal.
3. However, the Council referenced Policies DM1, DM2 and DM5 of the Worthing Borough Council Submission Draft Local Plan 2020-2036 on the decision notice. There are minor changes to these policies in the adopted version of the LP. The Council provided an update on the status of the LP and included extracts of the relevant policies within their appeal statement, which the appellants have had the opportunity to comment on. I have determined the appeal on the basis of the development plan at the time of my decision. The superseded development plan documents are no longer applicable for the determination of this appeal. I am satisfied that no party has been prejudiced by my approach.

Main Issues

4. The main issues are the effect of the proposed development on:
 - i) the character and appearance of the area;
 - ii) the living conditions of occupants of 1 and 3 Eastcourt Road with particular regard to outlook, sunlight, daylight, noise and disturbance; and
 - iii) the living conditions of future occupants of the proposed development.

Reasons

Character and appearance

5. The appeal site lies within a mixed use area. Opposite the site is a train station car park and some industrial units. The properties on Eastcourt Road and the northern side of Southcourt Road are predominantly within residential use, consisting mainly of 2 storey period terraced properties. The adjacent terraced properties typically have 2 storey projecting bays, sash windows and decorative features above the windows and doors. The terraced properties generally have small front gardens that are enclosed by a low boundary wall and are finished in a painted render. To the rear, the terraced properties have 2 storey outriggers. The uniformity of the terraced properties in terms of their size, traditional character and formal layout makes a positive contribution to the character and appearance of the area.
6. The appeal site lies to the rear of Nos 1 and 3 Eastcourt Road (Nos 1 & 3). There is a small garage on the site, which has a pitched roof and fronts onto Southcourt Road. The existing garage adjoins the boundary with a pathway to the west, which provides pedestrian access to the rear of properties that front Eastcourt Road. The existing garage is in a poor condition and landscaping within the site is overgrown. Although more a matter of maintenance, the appeal site currently detracts from the character and appearance of the area.
7. The proposal seeks to extend the existing garage and convert it into a residential studio. The existing garage by reason of its use, size and siting appears ancillary to No 1 and is subservient in relation to the neighbouring dwellings. The principle of residential development on the site would not be at odds with the surrounding area. The site is also well related to existing services, facilities and public transport links.
8. Planning permission to extend and convert the garage to a studio dwelling was dismissed at appeal in June 2021 (ref: 3270034). In comparison to the dismissed scheme, the plot size has increased, to incorporate land to the rear of No 3. The previously proposed flat roof element has also been omitted. Whilst the proposed dwelling would be greater in depth, it would be narrower in width, which would result in additional space and landscaping around the dwelling. The proposal would also be sited further away from Nos 1 and 3 than the dismissed scheme.
9. The form of the proposed development is not dissimilar to the existing garage; however, it would be larger in width, depth and height. The replacement of the garage door with windows and a door, and the change in roof form would transform the character of the building from that of a domestic outbuilding to a new independent dwelling.
10. The proposed dwelling would extend the built form across the site so that it would adjoin part of the rear boundary of No 3. No 3 has a single storey extension off its rear outrigger and a very small back garden. Although the proposed dwelling would have more space to the side than the dismissed scheme and provide outdoor amenity space to the rear, side and front, the proposal by reason of its close proximity to its boundaries and its relationship with neighbouring properties would still appear unduly cramped. Although new soft landscaping is proposed, the frontage of the property would be largely

dominated by hard surfacing and domestic clutter, including the cycle store and bin store, which would detract from the street scene.

11. I acknowledge that there is limited space between the outriggers on the terraced properties. However, the space between the outriggers is predominantly used to access the rear gardens, rather than for amenity space. This does not justify the cramped relationship that the proposal would have with the rear boundaries of adjacent properties.
12. The Inspector for the dismissed scheme found that the proposed single storey contemporary style dwelling would be out of keeping with the adjacent 2 storey terraced properties and would harm the character and appearance of the area. Whilst the proposal omits the flat roof element and the provision of a pitched roof and use of painted render would be reflective of adjacent properties, the proposal by reason of its size, height and modern design would remain at odds with the adjacent 2 storey terraced properties, which have a uniformed and traditional appearance. Consequently, the proposal would appear incongruous in this location and fail to respect the local distinctive character of the area.
13. Although there is a detached dwelling to the rear of 1 Southcourt Road, this dwelling is not readily appreciated within the wider street scene as it is set some distance back from the highway. The proposed dwelling would be more visible in the street scene and its size and cramped relationship to adjacent properties would fail to respect the established urban grain.
14. I recognise that the proposed development would tidy up the existing site and improve the character and appearance of the area, which would benefit the street scene and the experience of local people. However, appropriate maintenance of the site would achieve similar objectives, without the resultant harm that I have identified. I therefore give this benefit very limited weight.
15. For the reasons given above, I conclude that the proposed development would cause significant harm to the character and appearance of the area. The proposal would conflict with Policies DM2 and DM5 of the LP. These policies amongst other matters require that new residential development respects and enhances the character of the site and makes a positive contribution to the sense of place, local character and distinctiveness of an area.
16. The proposal would also be contrary to the Council's Guide to Residential Development Supplementary Planning Document (2013) (SPD), which requires that proposals respond positively to their context, giving particular consideration to local building heights. Furthermore, the proposal would conflict with the Framework, which requires that development is sympathetic to local character, including the surrounding built environment.
17. In respect to this main issue, I do not find conflict with Policy DM1 of the LP, which relates to housing mix. Policy DM1(b) does require development to respect the characteristics of the local area, but this relates purely to self-build and custom build projects; neither of which are proposed in this appeal.

Living conditions of occupants of Nos 1 & 3

18. Whilst the proposed development would be set further away from No 3 than the dismissed scheme, the proposal would now extend into land directly to the rear of No 3. No 3 has a very small rear garden and the proposed development would adjoin part of the rear boundary.

19. The proposed dwelling would be higher and have a greater overall mass than the existing garage. Although the proposal would have a pitched roof, which would reduce some of its massing at roof level, its flank elevation would exceed the height of the boundary fence and its sloping roof would be visible above. The proposal by reason of its height and siting would create an increased sense of enclosure and would appear oppressive and overbearing from the ground floor, rear facing windows of No 3 and its rear garden.
20. Given the height, siting and orientation of the proposed dwelling, the proposal would result in a detrimental loss of daylight and sunlight to the ground floor rear windows of No 3 and its garden. Although the proposed development is not directly to the south of the garden of No 3, it would be to the south-west of this property. Consequently, there would be a reduction in sunlight particularly in the afternoon and evening and during the winter months. As a result of the size, mass and siting of the proposed dwelling, it would have a greater impact on the living conditions of No 3, in respect to outlook, daylight and sunlight than the dismissed scheme.
21. The proposal would be set further away from No 1 than the dismissed scheme. No 1 has a small lean-to extension off its outrigger, which has high level windows facing the appeal site. There is a close boarded fence and planting immediately adjacent to this extension. Consequently, outlook, daylight and sunlight are already restricted to this extension. No 1 does not have any first floor windows on the rear outrigger facing the appeal site. Although, the proposal would come closer to this property than the existing garage, given the distance to the garden of No 1 and the fact that this area is already overshadowed by the existing boundary treatment and landscaping, means that the proposal would not appear unduly overbearing or result in a harmful loss of outlook, daylight or sunlight to No 1 or its garden.
22. The proposed dwelling and associated amenity space would not result in a significant adverse increase in noise to adjoining occupants when compared to the existing use. Furthermore, given the single storey nature of the proposal and existing boundary treatment, the proposal would not result in a harmful loss of privacy to neighbouring properties.
23. I note that occupants of No 3 support the proposed development. However, this does not change my findings in respect to living conditions.
24. Even though the proposal would not harm the living conditions of occupants of No 1, the proposal would cause significant harm to the living conditions of occupiers of No 3 with particular regards to outlook, sunlight and daylight. The proposal would fail to comply with Policy DM5 of the LP, which requires that new developments do not have an unacceptable impact on the occupiers of adjacent properties in respect to outlook, daylight and sunlight.
25. The proposal would also fail to comply with the Council's Guide to Residential Development SPD November 2013, which requires that development does not have a significant negative impact on amenity. In addition, the proposal would conflict with the Framework, which requires that developments provide a high standard of amenity for existing and future users.

Living conditions of future occupants of the proposed development

26. The proposed dwelling would measure 33 square metres (sqm). Although the proposal achieves the minimum floor area for a studio flat set out within the Council's Space Standards SPD February 2012, these standards have been superseded by the new LP. Policy DM2 of the LP requires that proposals comply with The Technical Housing Standards - Nationally Described Space Standard 2015 (the Standards). The Standards require that a single storey, one bedroom dwelling has a minimum internal floor area of 37 sqm. Whilst I acknowledge that the scheme is for a studio apartment (as opposed to a one bedroom flat) and that space is not lost to internal walls and corridors, the Standards do not provide any relaxation for residential studios. There are no exceptional circumstances before me to justify a departure from these minimum standards, as required by Policy DM2.
27. The Space Standards SPD requires that small, detached dwellings (up to 3 bedrooms) have a rear garden that measures at least 85 sqm. The proposal would have a rear garden of 12 sqm, which falls significantly short of this standard. The rear garden would also be overlooked by the first floor windows of No 3 at a relatively short distance. Whilst other amenity space is proposed to the side and front of the dwelling, these areas would be more visible from the public realm and would not provide good quality, private amenity space. Although the outdoor amenity space would be greater in size than the floor area of the dwelling, the outdoor amenity space would be of a poor quality and not meet the minimum standards set out within the Space Standards SPD.
28. The Inspector for the dismissed scheme found that there would be very limited outlook for future residents. The scheme before me has sought to address this by providing a triple aspect dwelling. However, future residents would still have a limited outlook due to the constrained nature of the site. Furthermore, the living accommodation and outdoor amenity space would be small and cramped and there would be limited storage space within the dwelling. Consequently, the proposal would fail to provide acceptable living conditions for future occupants.
29. For the reasons given above, I conclude that the proposed development would fail to provide adequate living accommodation for future occupants. The proposal would be contrary to Policy DM2 of the LP. This policy amongst other matters requires that new dwellings meet as a minimum, the nationally described space standards for internal floor areas and storage space.
30. The proposal would also conflict with the Council's Space Standards SPD February 2012, which seeks to provide a satisfactory standard of external space for new dwellings. In addition, the proposal would conflict with the Framework which requires that developments provide a high standard of amenity for future users and promote well-being.
31. Policy DM5 is not applicable to this main issue, as it refers only to the impact of proposals on occupants of adjacent properties and not the living conditions of future occupants of the development.

Other Matters

32. The appellants consider that the scheme would have health and safety benefits to neighbouring residents due to the poor upkeep of the site and lack of

occupation. The condition of the site is more a matter of maintenance and could be easily remedied. There is limited evidence before me that anti-social behaviour is an issue on the site, and I therefore give this limited weight. The appellants also argue that removing the car use from the site will remove associated pollutants. However, any emissions generated from one vehicle arriving or departing the site would have a minimal impact on neighbouring occupants and I therefore give this suggested benefit very limited weight.

Planning Balance

33. At the time that this planning application was determined, the Council was unable to demonstrate a 5 year housing land supply (5YHLS). Following adoption of the new LP, the Council has confirmed that it can now demonstrate a 5YHLS. However, the Council accepts that it does not meet the Housing Delivery Test. The latest Housing Delivery Test shows that the Council delivered 35% of its housing requirement within the last recorded 3 years, which is a substantial under delivery. Consequently, the provisions of paragraph 11 d) (ii) of the Framework apply. This sets out that where the policies which are most important for determining the application are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. Notwithstanding the shortfall in housing delivery, I accord the conflict with Policies DM1, DM2 and DM5 of the LP considerable weight, as they are recently adopted policies that are consistent with the Framework.
35. The proposed development would align with the objectives of the Framework, which seek to significantly boost housing supply and promote the effective use of land. In addition, the proposal would support the development of under-utilised land and buildings, in an area where land is constrained. The scheme would also provide housing within a location that has good accessibility to services, facilities and public transport links.
36. The provision of one new dwelling would make a small contribution towards the Council's housing land supply. It would provide one small unit of accommodation, which would be attractive to a range of households, including those on lower incomes or those who do not have access to a private motor vehicle. Environmental benefits of the proposal include tidying up of a currently run down site; making efficient use of land; refurbishment and extension of a redundant building; provision of cycle parking to support sustainable transport modes; provision of renewable energy technology; and, new planting.
37. The appellants assert that the economic benefits from the increased Council tax receipts and the New Homes Bonus are material considerations for this appeal. Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that a local planning authority must have regard to a local finance consideration as far as it is material. The Planning Practice Guidance makes it clear that it is not appropriate to make a decision based on the potential for a proposal to raise money for a local authority. Accordingly, I ascribe little weight to these suggested benefits.
38. Overall, the social, economic and environmental benefits of the scheme carry limited weight in favour of the development. However, against these benefits, there would be significant harm to the character and appearance of the area

and the living conditions of neighbouring occupants, which I give significant weight. Furthermore, the proposed development would fail to provide an acceptable standard of accommodation and private outdoor amenity space for future occupants, which I afford significant weight.

39. Overall, given the harm I have identified above, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole and therefore the presumption in favour of sustainable development does not apply in this case.

Conclusion

40. For the reasons given above, having regard to the development plan as a whole, the Framework and all other relevant material considerations, I conclude that the appeal should be dismissed.

A James

INSPECTOR



Appeal Decision

Site visit made on 15 June 2023

by **J White BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 July 2023

Appeal Ref: APP/M3835/W/23/3315490

Lynhurst Road, Broadwater, Worthing BN11 2DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchison Networks (UK) Limited against the decision of Worthing Borough Council.
 - The application Ref AWD/1478/22, dated 31 August 2022, was refused by notice dated 26 October 2022.
 - The development proposed is 15.0m Phase 9 slimline Monopole and associated ancillary works.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of 15.0m Phase 9 slimline Monopole and associated ancillary works at land at Lyndhurst Road, Broadwater, Worthing BN11 2DW in accordance with the terms of the application Ref AWD/1478/22 dated 31 August 2022, and the plans submitted with it including BN0801 issue A.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form, albeit with superfluous information not referring to an act of development removed.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis and informed the main issue.
4. The Worthing Borough Council Local Plan 2020 – 2036 (WLP) was adopted on 28 March 2023. The parties have had the opportunity to comment on the updated policy position and these comments have been taken into account, where received. In any event, the principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have done so only insofar as the policies are a material consideration relevant to matters of siting and appearance.

Main Issue

5. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area.

Reasons

6. The proposed development would be located on the wide pavement directly in front of a public car park on the south side of Lyndhurst Road. The pavement either side of the road contains a range of street furniture, including lighting columns, street signs, traffic lights and bus shelters. The car park of Worthing Hospital is opposite with the hospital building further to the north. The street within the vicinity of the appeal site is lined with established trees either side.
7. The proposed 15m telecommunications mast with ancillary equipment would be of functional appearance, typical of telecommunications equipment seen in urban and suburban areas generally. Although the proposal would be greater in height than the existing lighting columns, the development would be largely screened in views along Lyndhurst Road. Even in winter, the trees would offer some screening. However, the development would be readily visible from positions near to the site, including the bus stops on Lyndhurst Road and from the car parks either side, between the existing trees.
8. As it would be seen amongst many vertical features, including the lighting columns and established trees, the monopole would not stand out as an isolated or unduly exposed structure. This would be the case even though it would be close to car parks and the upper part of the monopole would protrude above the trees either side. It would not appear alien or unexpected and would be seen against the vegetation, which provides a visual break to the car parks and a level of enclosure to the street.
9. Although the proposed monopole would be a tall installation and the antennas at the top would add some bulk, it would overall appear as a narrow, slimline feature. The areas of car park would continue to contribute to provide visual relief to its built-up surroundings, notwithstanding the introduction of the proposed development, and would remain largely open features either side of the road.
10. The proposed number of cabinets would result in a row of them along the pavement's edge, but they are typical of the form of structures seen on roadsides. As such they would not appear as incongruous features within the street and would not lead to undue visual clutter. Thus the proposal, when considered as a whole, would avoid causing material harm to the character and appearance of the area.
11. My attention has been drawn to the nearby 'Farncombe Road' Conservation Area and the potential impact the proposal might have on it. However, the appeal site does not lie within the conservation area, with it ending approximately 100 metres to the east of the appeal site. As such it would be erroneous to undertake the statutory duties under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended.
12. In any case, I have found that the proposal would not adversely compromise the character or appearance of the street scene. For similar reasons, and given the context of the appeal site, I do not find that it would cause harm to the setting of the conservation area.

13. Consequently, the proposal would not appear overly prominent or visually intrusive, and the siting and appearance of the proposed installation would have an acceptable effect upon the character and appearance of the area. Insofar as it is a material consideration, the proposal would comply with Policies DM5 and DM14 of the WLP, which amongst other provisions, seek to ensure development is high quality and that telecommunication infrastructure minimises its impact on the visual amenity, character or appearance of the surrounding area. The appeal scheme also complies with the National Planning Policy Framework (the Framework) which seeks proposals for telecommunications to have no significant adverse effect on the external appearance of the space in which they are located.

Other Matters

14. The Framework is clear that Local Planning Authorities should not question the need for an electronic communications system. I am satisfied that the plans and details submitted are sufficiently accurate to enable an assessment of the impact of the proposal to be made.

15. I note the concerns about the lack of consultation with the Council prior to the application for prior approval being submitted. However, I note the Delegated Officer Report sets out the consultation responses received by the Council following receipt of the application. I have taken into account the views expressed as part of that process, along with those submitted in response to the appeal. I consider that sufficient consultation has been undertaken.

16. I acknowledge that concerns have been raised about potential effects on health, particularly the proposed monopole's proximity to the hospital, children's nursery and care home, including people with existing health issues. Third parties have pointed to a number of studies and a legal challenge. However, the appellant has provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. I do not consider that the evidence before me indicates that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.

17. Within their evidence, the appellant states that the site maintains a reasonable distance from 'sensitive receptors'. This term is not defined, although I note that the site has been chosen to be the best possible location to provide 5G coverage at the furthest distance from sensitive residential receptors. The effect on health is not in and of itself a valid material consideration, and I have little substantive evidence to demonstrate the proposal by virtue of its siting or appearance would be harmful to sensitive receptors.

18. The Equalities Act 2010 sets out the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This involves having due regard, in particular, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and those who do not.

19. The principle of development is established by Part 16 of the GPDO. Potential impact on health is addressed above and, whilst the parties dispute this, I note

that the information submitted by the appellants sets out that consultation was carried out with the nearby children's nursery and that the hospital has been consulted by the Council. Therefore, I am satisfied that allowing prior approval would not amount to discrimination for any protected group under the Equalities Act.

20. Concerns have also been raised regarding the proximity of the installation to residential housing. Given the distance of the proposed installation from the closest residential properties and the surrounding context, I am satisfied that no undue loss of light, privacy or outlook would occur. Nor would the mast be overbearing when seen from those properties.
21. The Framework seeks to minimise the number of such sites and encourages the use of existing masts and buildings for new equipment. However, in this case there is evidence that such options have been explored and discounted for specific reasons. Also, as I have identified that the siting and appearance of the proposed development would be acceptable, it is not necessary to consider the detailed merits of any potential alternative site.
22. The impact of the proposed development upon the natural environment, including trees and pollinators, is not substantiated. Concerns raised relating to the proposal's carbon footprint and effect on property values fall beyond the scope of the prior approval process to which this appeal relates.
23. Where the equipment would be sited, I observed seemingly stable ground conditions. Moreover, any possible threat to the stability of the proposed development has not been clearly substantiated. I have also had regard to other matters raised by local residents, such as the potential for the installation of CCTV and the proximity of the proposal to Beach House Park, but find none that lead me to a different overall conclusion.
24. I acknowledge the appeal decision referred to by the Council. I have not been provided with the full details of the case, including the design and precise location and I am therefore unable to fully assess any direct comparability to the current appeal proposal. However, from the details before me, it appears that the merits and circumstances of this appeal is materially different to the appeal proposal before me, including that the site was in a different location. In any case, every appeal must be considered on its own merits, as I have done.

Conditions

25. Any planning permission granted for the development under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2), which specify that the development must, except to the extent that the Local Planning Authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the Local Planning Authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

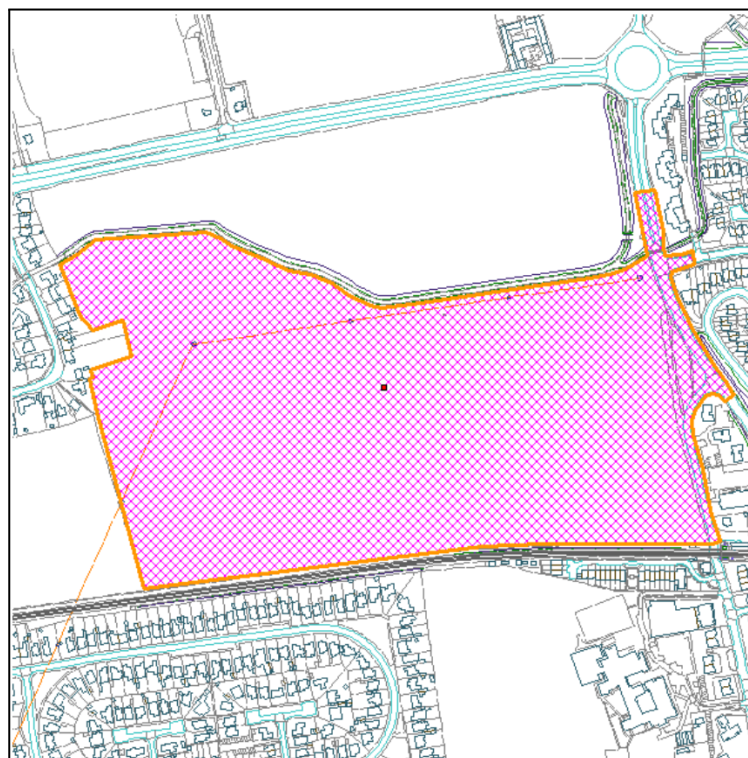
26. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

J White

INSPECTOR

UPDATE REPORT

Application Number:	AWDM/1264/20	Recommendation - To agree to new refusal reasons to contest the redetermined appeal on this site.
Site:	Land North West Of Goring Railway Station, Goring Street Worthing (Chatsmore Farm)	
Proposal:	Mixed use development comprising up to 475 dwellings along with associated access, internal roads and footpaths, car parking, public open space, landscaping, local centre (uses including A1, A2, A3, A4, A5, D1, D2, as proposed to be amended to use classes E, F and Sui Generis) with associated car parking, car parking for the adjacent railway station, undergrounding of overhead HV cables and other supporting infrastructure and utilities (Outline with all matters reserved)	
Applicant:	Persimmon Homes Thames Valley	Ward:
Agent:	Mr David Hutchison, Pegasus Group	
Case Officer:	Gary Peck	



Not to Scale

Background

- 1.1 In August 2020, an outline application was submitted for the erection of 475 dwellings and associated infrastructure at the land known as Chatsmore Farm. The proposed layout is shown below:



- 1.2 In March 2021, the Committee resolved to refuse this application for the following reasons:

1. The proposed development is outside of the built-up area as defined in the Worthing Core Strategy and the emerging Submission Draft Worthing Local Plan and is not allocated for residential development. The proposal is therefore contrary to policy 13 of the Worthing Core Strategy and emerging policies SS4, SS5 and SS6 of the Submission Draft Worthing Local Plan, resulting in the coalescence of settlements and the loss of an important area of green space that contributes to local amenity, sense of place and wildlife. Furthermore, it is considered that the adverse impacts of the development would demonstrably outweigh the benefits as substantial adverse landscape and visual effects would arise from the development affecting the local area and the wider landscape, including the landscape setting to the National Park (therefore adversely affecting its statutory purpose to conserve and enhance its natural beauty and cultural heritage), Highdown Hill scheduled Monument and the Conservation Area.
2. The application is considered to be premature as the development proposed is so substantial, and its cumulative effect would be so significant, that to grant permission would undermine the plan-making process in particular its overall spatial strategy about the location of new development, its landscape evidence and proposed green space designations that are central to the emerging Submission Draft Worthing

Local Plan. The proposal therefore fails to comply with paragraph 49 of the National Planning Policy Framework.

3. The Local Planning Authority is not satisfied that adequate information has been submitted to demonstrate that the proposal is acceptable in terms of access and would not therefore give rise to increased hazards to highway users including the Strategic Road Network. The proposal therefore fails to comply with the relevant guidance of the National Planning Policy Framework which requires that the potential impacts of development on transport networks can be addressed in development proposals.
 4. The Local Planning Authority does not consider that adequate information has been submitted to demonstrate that the mitigation proposed is acceptable in terms of its impact on the local highway network including (but not limited to) the Goring Crossroads and A259/ Goring Way / Aldsworth Avenue junctions and Strategic Road Network. As such it has not been demonstrated that the development would not have a severe impact on the local highway network and therefore the proposal fails to comply with paragraph 109 of the National Planning Policy Framework 2019.
 5. It has not been demonstrated to the satisfaction of the Local Planning Authority that the development provides suitable mitigation for the impact of the development upon ground nesting birds.
 6. It has not been demonstrated to the satisfaction of the Local Planning Authority that the infrastructure requirements of the development can be adequately met in respect of the provision of affordable housing, public and open space, highways improvements and off site mitigation for the provision of nesting birds.
- 1.3 The decision was appealed by the applicants and a Public Inquiry subsequently took place in January 2022. By the time of the appeal, reasons for refusal 3,5 and 6 had been resolved and the appeal therefore proceeded on the remaining grounds.
- 1.4 The Inspector allowed the appeal by decision letter of 25 February 2022, concluding:

'While I consider the proposal would result in a number of adverse impacts, I do not consider they would significantly and demonstrably outweigh the clear and substantial benefits that would arise from the proposed development when assessed against the policies of the Framework taken as a whole.

Consequently, notwithstanding the overall conflict with the development plan...I consider there are material considerations which indicate that a departure is justified in the present circumstances.'

- 1.5 The appeal decision was extremely disappointing for Members, Officers and residents alike and moreover the Inspector's reasoning for his decision, most particularly his conclusions in respect of the then emerging Local Plan and the impact of the development upon the adjoining National Park, seemed flawed and certainly not reflective of the earlier position taken by the Local Plan Inspector who had endorsed the protection of the site as proposed by the Local Plan.
- 1.6 As a result, the Council concluded there were sound reasons for a High Court challenge which was submitted on the following grounds:

The Council submits that the Inspector erred in the following respects:

- i) In his treatment of the impact of the development on the gap between the settlements of Goring and Ferring, specifically in failing to provide adequate reasons in respect of those impacts or consequent assessment of the development against Policy SS5 of the emerging Local Plan ("eLP").
 - ii) In failing to take account of the conflict with Policies SS1 and SS4 of the eLP and/or failing to provide adequate reasons as to the assessment of the development against those policies or the weight to attribute to any conflict.
 - iii) In failing to take account of a material consideration, namely the reasons for the absence of a specific gap designation in the adopted development plan.
 - iv) In his treatment of the impacts of the development on the South Downs National Park ("the National Park"), specifically in failing to comply with his duty in section 11A of the National Parks and Access to Countryside Act 1949 ("the 1949 Act") and/or paragraph 176 of the National Planning Policy Framework ("the Framework"); and/or in failing to provide adequate reasons and/or reaching an irrational conclusion in respect of the impact of the development on the National Park.
- 1.7 The High Court hearing took place in July 2022. In her decision of August 2022, the Judge concluded that:

The claim for statutory review is allowed on Grounds 2 and 4 only. The decision of the Inspector is to be quashed by order of the Court.

- 1.8 In terms of ground 2, the Judge concluded that '*If, as is likely, the Inspector found that the proposed development was in conflict with Policies SS1 and SS4, he should then have determined the appropriate weight to accord to any such conflict, and treated it as a material consideration in the overall planning balance*' and with regard to ground 4 that the Inspector had '*failed to give weight to the acknowledge 'moderate adverse' impacts upon the National Park*'

1.9 Persimmon submitted an application to appeal the High Court decision later in August 2022 and in October 2022 leave to appeal the decision was granted. The matter was therefore considered again in the Court of Appeal in May and considered before 3 judges, Sir Geoffery Vos, Master of the Rolls, Sir Keith Lindblom, Senior President of Tribunals, and Lady Justice Andrews.

1.10 The decision was handed down at the end of June. It set out the key issues as:

The main question in this case is whether an inspector who granted planning permission for a large development of housing and other uses in countryside within the setting of a National Park made errors of law when considering relevant local and national planning policy. The court below held that he did, in two ways: first, in failing to deal with the proposal's conflict with two draft strategic policies in an emerging local plan, and secondly, in misapplying the Government's policy for development that would affect the setting of a National Park.

1.11 The Court of Appeal did not agree with the Judge's conclusions in respect of the conflict with the draft policies (SS4 and SS5) in the then emerging Local Plan:

'I therefore disagree with the judge...I do not think there is any real doubt about the lawfulness of the inspector's approach to the draft strategic policies of the emerging local plan on which the council relied. In my view he clearly did take those policies into account, gave weight to the proposal's conflict with them, and provided proper reasons for his relevant conclusions. Those conclusions show a reasonable and lawful exercise of planning judgement on the evidence and submissions he heard.'

1.12 In respect of the second issue, however, regarding the effect of the proposal upon the setting of the National Park, the appeal judges found with the Council:

'It is only in paragraph 49 that the inspector addressed the question of the proposal's compliance or otherwise with the policy in paragraph 176 of the NPPF. In that paragraph, however, he said nothing about the requirement in the first sentence of paragraph 176 that "[g]reat weight should be given to conserving and enhancing landscape and scenic beauty in National Parks". There are two difficulties here. First, it is not clear how the inspector reconciled his conclusions on harm in paragraphs 47 and 48 with his conclusion at the end of paragraph 49 that neither the setting of the National Park nor views from within it would be "materially affected". On a straightforward reading of what he did say, these conclusions seem at variance with each other, or at the very least to call for some further words to align them. Secondly, and anyway, it is not clear how he reconciled his conclusions on harm to the setting of the National Park in paragraphs 47 and 48 with the "great weight" principle in the first sentence of paragraph 176 of the NPPF. In what he did say about that harm there is no indication that he gave it such weight as the "great weight" principle required, or indeed what weight, if any, that was. If it really was no weight, he did not explain why this was so...'

...A third difficulty is this. The conclusions in subsequent passages of the decision letter, including the section where the inspector weighed the planning balance, do nothing to overcome the deficiencies in the passage where he was specifically considering the relationship of the proposal to the policy in paragraph 176 of the NPPF. His "Overall conclusions on landscape" in paragraph 57 of the decision letter repeat his earlier conclusion, in paragraph 49, that the proposed development would not "materially affect the setting of the [National Park]", but they do not refer to the policy or expand on what he said in paragraph 49. I do not think one can infer that when he said the appeal site was "valued by the local community and ... its loss would result in some harm in this respect" he was referring to the effects it would have on the setting of the National Park or to the paragraph 176 policy. And I do not accept he was doing that when he referred to his conclusion that the development would "adversely impact on a number of visual receptors which would result in some further harm". His references to "visual receptors" in paragraph 57 and again in paragraph 84 seem to relate to his consideration of "localised impacts" in paragraphs 50 to 56, and not to his evaluation of the effects on the setting of the National Park. If this is a misreading of his conclusions, that is, I think, only a consequence of the deficiency in his reasons. And when he came to the "Overall Planning Balance" in paragraphs 82 to 92 he made no mention at all of the National Park and its setting, or of the policy in paragraph 176 of the NPPF. The most one could say is that in acknowledging the development "would result in a number of adverse impacts", in paragraph 91, he might have meant to include the adverse effects he had found it would have on the setting of the National Park. But this too is unclear...

...It is enough to conclude, as I think we must, that in this part of his decision-making the reasons he gave failed to meet the standard required...

...In my view, therefore, the council's complaint on this ground is justified. The inspector's reasons are defective. They leave a substantial doubt that he has lawfully applied relevant national policy to one of the main issues in the section 78 appeal.'

Current Situation

2.1 The Planning Inspectorate confirmed by letter of 3 August:

Following a High Court challenge to our Inspector's decision on this appeal dated 25th February 2022, the Court has ordered that the appeal be re-determined. This does not necessarily mean that the Inspector will reach a different overall decision.

2.2 The Council has now been invited to send further representations to the Planning Inspectorate, covering any material change in circumstances and to comment on the specific issues upon which the appeal was quashed. This must be done by Thursday August 24th.

2.3 At the time of writing this report, your Officers were about to seek further advice from Counsel regarding the submission and any advice received from Counsel

will be reported verbally to Members since it is not anticipated that it will be received prior to Monday 21 August.

- 2.4 As the appeal decision has been quashed the appeal is to be redetermined. However, there has been a material change in local planning policy since the appeal decision and therefore there will be a completely different context for the appeal to be redetermined.
- 2.5 At the time of the appeal, the Local Plan had not been adopted and the issue debated at appeal was whether the issue of prematurity was a valid ground for refusing the application. The current position is that we now have an adopted Plan supported by a Local Plan Inspector and the current proposal is clearly contrary to an up to date Development Plan.
- 2.6 The adoption of the Local Plan in March now means that the current development plan policies define the site as outside the built-up area. Policy SS4 states:
 - a) *Outside of the Built Up Area Boundary land (excluding sites designated as Local Green Space under SS6) will be defined as 'countryside and undeveloped coast'.*
 - b) *Development in the countryside will be permitted, where a countryside location is essential to the proposed use. Applications for the development of entry-level exception sites, suitable for first time buyers or those looking to rent their first home will be supported where these:*
 - *comprise of entry-level homes that offer one or more types of affordable housing;*
 - *are adjacent to existing settlements, and proportionate in size to them;*
 - and*
 - *comply with any local design policies and standards.*
 - c) *Development to support recreation uses on the coast will normally be permitted subject to: i. built facilities being located within the adjacent Built Up Area Boundary; ii. the need to maintain and improve sea defences.*
 - d) *Any development in the countryside and undeveloped coast should not result in a level of activity that has an adverse impact on the character or biodiversity of the area...*
 - ...f) *The setting of the South Downs National Park and the Designated International Dark Skies Reserve must be respected and opportunities to improve access to the National Park will be sought through joint working with other organisations including the Park Authority, West Sussex County Council, National Highways and landowners. Any development within the setting of the National Park should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.*
- 2.7 In addition, the application site is specifically identified under policy SS5 as a Local Green Gap:

The four areas listed below are designated as Local Green Gaps between the settlements of Worthing & Ferring and Worthing & Sompting/Lancing, and will be protected in order to retain the separate identities and character of these settlements.

a) Goring-Ferring Gap;

b) Chatsmore Farm;

c) Brooklands Recreation Area and abutting allotments;

and d) Land east of proposed development (site A14) at Upper Brighton Road.

Outside of those areas designated as Local Green Space [Brooklands is the only Local Green Space in the Borough], all applications for development (including entry level exception sites) within Local Green Gaps must demonstrate that individually or cumulatively:

- i) it would not undermine the physical and/or visual separation of settlements;*
- ii) it would not compromise the integrity of the gap;*
- iii) it conserves and enhances the benefits and services derived from the area's Natural Capital; and*
- iv) it conserves and enhances the area as part of a cohesive green infrastructure network.*

- 2.8 Your Officers therefore consider that the clear conflict with Local Plan policies should also be pursued in the redetermined appeal.
- 2.9 The issue relating to the setting of the National Park, which was also upheld by the Appeal Court judges, clearly must now be pursued further in the redetermination of any appeal. Paragraph 176 of the National Planning Policy Framework states 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks'. It was acknowledged by the Inspector that there would be a moderate adverse impact upon the setting of the National Park as a result of the development and, as found by the respective Judges, it is difficult to reconcile such a conclusion with the requirements of national planning policy to an extent that the development should be allowed.
- 2.10 Although there was a reason for refusal on highways grounds submitted to the previous appeal, the Inspector did not uphold this reason for refusal and this aspect of the appeal was not challenged subsequently. Accordingly, West Sussex County Council has confirmed that they will not pursue the highways reason for refusal any further. There is no reason for Officers to dispute this advice.
- 2.11 The National Park Authority did not appear at the previous Inquiry. In light of the Appeal Court judgement, your Officers will be requesting that the National Park also makes representations to the Inspectorate and ideally attends any future appeal inquiry.

2.12 It was hoped that following the Appeal Court decision, Persimmon may withdraw their appeal. Although a request has been made by your Officers to this effect, no response has been received at the time of writing this report.

Recommendation

To continue to pursue any further appeal on the following grounds (precise wording subject to comments by Counsel representing the Council):

1. The proposed development is outside of the built-up area as defined by the Worthing Local Plan (2023) and does not comprise development essential to the countryside nor does it comprise development of entry level exception sites. The proposed development also and would have an adverse impact on the setting of the adjacent South Downs National Park and therefore is contrary to paragraph 176 of the National Planning Policy Framework and policy SS4 of the Worthing Local Plan.
2. The proposed development comprises development in a designated Local Green Gap which would undermine the physical and visual separation of Goring and Ferring therefore compromising the integrity of the gap. Further, the proposed development by virtue of its scale would fail to conserve and enhance the benefits and services derived from the area's Natural Capital nor maintain the site as part of a cohesive green infrastructure network. The proposal therefore fails to comply with policy SS5 of the Worthing Local Plan (2023).