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## Appeal Decision

Inquiry held on 8 and 9 December 2015

Site visit made on 9 December 2015

**by Peter Rose BA MRTPI DMS MCMl**

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

**Decision date: 08 February 2016**

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**Appeal Ref: APP/L3815/W/14/3000690**

**Land south of Clappers Lane, Bracklesham, 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 Wates Developments Ltd against the decision of Chichester District Council.
  - The application Ref: EWB/14/01806/OUT, dated 29 May 2014, was refused by notice dated 1 April 2015.
  - The development proposed is described on the application form as the erection of 140 residential dwellings, new vehicular access, open space, and other ancillary works.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 110 residential dwellings, new vehicular access, open space, and other ancillary works at land south of Clappers Lane, Bracklesham, West Sussex in accordance with the terms of the application Ref: EWB/14/01806/OUT, dated 29 May 2014, and subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs has been made by Wates Developments Ltd against Chichester District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application is for outline planning permission, with all matters except access reserved for subsequent approval, and was amended to 110 dwellings prior to the authority's decision. The site address is as discussed and agreed at the inquiry by the main parties. Whilst matters of appearance, layout, landscaping and scale are not formally submitted for determination as part of this application, the submission is accompanied by illustrative details to which I have regard.
  4. An agreement was presented to the inquiry made between the main parties under section 106 of the Town and Country Planning Act 1990. This agreement has been subsequently signed and completed as a deed dated 11 December 2015 and I consider the appeal on that basis.
  5. The Council's outstanding objection to the development relates solely to the matters set out in Reason 4) of its decision notice. The other matters
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previously set out in its decision have been subject to on-going discussions between the main parties and are no longer the subject of Council objection, subject to the terms of the submitted section 106 agreement and other details. These include matters relating to affordable housing, infrastructure and other mitigation.

### **Main Issues**

6. The main issues in this appeal are:

(a) whether the proposed development would be premature, with particular regard to the East Wittering and Bracklesham Neighbourhood Plan, and to the requirements for masterplanning, and;

(b) whether the Council is able to demonstrate a five year supply of housing land and any implications arising with regard to the National Planning Policy Framework (the Framework).

### **Reasons**

#### ***Prematurity with regard to the East Wittering and Bracklesham Neighbourhood Plan***

##### *Relevance of the Adopted Chichester Local Plan: Key Policies 2014-2029*

7. The appeal site is some 5.59 hectares of open land located to the north-east of Bracklesham village centre and some distance west of the Earnley Conservation Area. It comprises an area of agricultural land with access from Clappers Lane. The site is enclosed to the west by a residential development and faces further dwellings to the north. To the south is a further development of 50 dwellings at land north-east of Beech Avenue which is currently under construction. To the east is further open land.
8. Policy 2 of the Adopted Chichester Local Plan: Key Policies 2014-2029 (the Local Plan) identifies East Wittering/Bracklesham as a Settlement Hub. It clarifies East Wittering/Bracklesham as a Strategic Development Location appropriate for medium-scale extension to the settlement. It further states that there is a presumption in favour of sustainable development within the Settlement Boundaries which will be reviewed through the preparation of development plan documents and/or neighbourhood plans. It also clarifies that development in the Rest of the Plan Area outside the settlements listed in the policy is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification.
9. Policy 24 of the Local Plan states that Strategic Development in East Wittering and Bracklesham will be allocated in the East Wittering/Bracklesham Neighbourhood Plan (the Neighbourhood Plan) and will include 180 homes. It further states that the Neighbourhood Plan process will involve the active participation and input from the local community and all relevant stakeholders. Development will be masterplanned in accordance with Policy 7, at a level proportionate to the scale of development.
10. It was also acknowledged by the Council at the inquiry that development of 180 new dwellings could not be achieved within the existing Settlement Boundary and, in this regard, I also note that the Settlement Boundary dates

from, and has been carried forward from, the Chichester District Local Plan First Review 1999.

11. Policy 45 of the Local Plan is also of relevance to Policy 2 and refers to development in the countryside. This is defined to be the area outside of Settlement Boundaries and includes for now the appeal site. The policy states that planning permission will be granted for sustainable development in the countryside but only subject to defined criteria which effectively limit development to essential, small scale, local need which cannot be met within or immediately adjacent to existing settlements.

*The East Wittering and Bracklesham Neighbourhood Plan*

12. The East Wittering and Bracklesham Neighbourhood Plan Area was designated in September 2013. Written submissions were made to the inquiry by the Parish Council explaining subsequent work to date. Over a year on, however, no pre-submission version of a Neighbourhood Plan has been published, but the Parish Council anticipates progress to pre-submission stage prior to 31 March 2016.
13. Representatives of the Parish Council did not give evidence in person to the inquiry, but I have noted the explanation of progress given in its written submissions, its concerns towards the development, and its preference for development elsewhere.

*Relevance of the Council's Site Allocation: Preferred Approach Development Plan Document 2014-2029*

14. The Council's Site Allocation: Preferred Approach Development Plan Document 2014-2029 (the Allocation DPD) is to be subject to public consultation in early 2016 and was very recently considered by the Council's Cabinet on 1 December 2015.
15. Policy EW1 of the Allocation DPD identifies a site at land west of Bracklesham Lane for development of approximately 130 dwellings on some 4.3 hectares. This would account for the remaining allocation identified by Policy 24 of the Local Plan beyond the permission granted at appeal for 50 dwellings at land north-east of Beech Avenue (Appeal Ref: APP/L3815/A/13/2192900 dated 18 September 2013).
16. Paragraph 5.4 of the Council's Cabinet report dated 1 December 2015 accompanying the Allocation DPD states that, where the pre-submission stage of a neighbourhood plan has not yet been reached, the Allocation DPD includes sites for that parish. If progress continues to be made on a neighbourhood plan and pre-submission stage is undertaken and completed by the end of March 2016, such sites will be removed from the Allocations DPD so as to enable neighbourhood plans to take the process forward.
17. The Council's Sustainability Appraisal which accompanies the Allocations DPD identifies the advantages of the land west of Bracklesham Lane relative to the appeal site to include closeness for walking into the facilities of East Wittering, and also refers to the presence of water voles at the appeal site. I also note land west of Bracklesham Lane is supported by the Parish Council.

*Prematurity in relation to the Neighbourhood Plan: findings*

18. The first of twelve core planning principles set out in the Framework is that planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. The Framework states they should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.
19. The advice set out in the government's Planning Practice Guidance (the Guidance) is that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. This requires account to be taken of the policies in the Framework and any other material considerations. It further states that such circumstances are likely, but not exclusively, to be limited to situations where both: (a) the development proposed is so substantial, or its cumulative impact would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and, (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
20. Significantly, the Guidance concludes that refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.
21. The Neighbourhood Plan does not exist as such, and therefore cannot be said to be inconsistent with any proposal for development of the appeal site. The Allocation DPD is at a very early stage of its progress as a development plan document and, in accordance with the Framework, can only be afforded very limited weight.
22. Further, I am unconvinced regarding the respective planning merits presented of the allocated site and the appeal site. I accept that the alternative site west of Bracklesham Lane would avoid the need for pedestrians to cross Bracklesham Lane itself and note the existence of an adjacent footpath connection. Even so, the relative distances of the site from East Wittering are not so different, the issue of voles is not something which has been identified as an insurmountable impediment to development, and the appeal site would also be close to other facilities such as Bracklesham Barn and not require pedestrians to cross Bracklesham Lane. Land west of Bracklesham Lane would also appear to have outstanding highway concerns in relation to a current application and raises questions around the intensity of the development given its size and the number of dwellings the Allocation DPD may seek it to accommodate. I also have regard to respective distances between sites as submitted by third parties.
23. Notwithstanding any informal preferences so far expressed by the Parish Council, the early stage of the Neighbourhood Plan means that its future content cannot be known and would only be formulated following necessary

- publicity, consideration of representations received, and subsequent endorsement through public examination.
24. Hence I find the appeal scheme would not give rise to any material harm in relation to the content of either the Neighbourhood Plan, which does not exist, or the Allocations DPD, which is only just emerging and the provisions of which in relation to the appeal site appear open to significant further question.
25. The relevance of the Neighbourhood Plan, however, is not just in terms of eventual content, but also in terms of the accompanying process. In particular, in Policy 24 there is an up-to-date Local Plan policy which relies fundamentally on the delivery of an additional and complementary Neighbourhood Plan which has yet to be produced in order to implement overall development strategy. A distinction is to be made between an unpublished Neighbourhood Plan, which I find in itself is of no weight as a document, and a process of neighbourhood planning seen as a fundamental part of implementing the development strategy of the Local Plan.
26. The proposal has emerged independently of the particular development plan process identified by the Local Plan. I therefore conclude that the proposed development would, in that specific regard, be contrary to Policy 24 of the Local Plan which anticipates Strategic Development in East Wittering and Bracklesham through an East Wittering/Bracklesham Neighbourhood Plan in-keeping with the Framework's commitment to plan-led neighbourhood planning.

***Prematurity with regard to masterplanning***

27. Policy 7 of the Local Plan states that development of identified strategic locations will be through a comprehensive masterplanning process involving the active participation and input of all relevant stakeholders prior to the submission of a planning application.
28. The appeal scheme already has an extensive planning history and has evolved and developed as a consequence of a detailed process of assessment, review and dialogue, including submission and determination of applications and a planning appeal relating to the previous proposal for 160 dwellings (Appeal Ref: APP/L3815/A/14/2219554 dated 9 January 2015). The planning history of the site has also involved significant opportunities for public engagement in accordance with the statutory requirements of the planning system.
29. The previous appeal decision concluded that the proposal should be regarded as a reasonably sustainable scheme but found the layout to be mediocre and unimaginative and that such defects outweighed the presumption in favour of the residential scheme that would otherwise pertain. The appeal proposal has been formulated in direct response to that decision.
30. The appeal decision relating to the adjoining site at north-east of Beech Avenue also stated that that land was not regarded as having been artificially separated from other adjoining land, and nor did the proposals appear to be piecemeal development in the usual sense of the term. It further stated that there was no obvious physical reason why adjoining land to the north, which includes the current appeal site, could not be developed at a future date and the two sites be physically connected. That statement is qualified, however,

with reference to the separate process of housing site selection and allocation as part of the then emerging local development framework.

31. Although Policy 24 refers to employment land, this is not identified as a basis for the Council's objection. Reference is also made to supporting community facilities and open space, and such matters already form part of the proposal formally set out in the accompanying section 106 agreement.
32. Given the history of the appeal scheme, I therefore have little reason to conclude that a further process of 'retrospective' masterplanning would add any significant value to the development planning process in this instance. Accordingly, the development would not be harmful to the development plan masterplanning process and would not be contrary to Policy 7.

### ***Five year housing land supply***

33. The Framework requires the local planning authority to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing relative to its full objectively assessed needs for market and affordable housing (OAN).
34. The matters in dispute between the parties are: how OAN should be interpreted; the relevant period for assessment of the five year housing supply; delivery rates; Southern Water's revised timetable for upgrade of Tangmere Waste Water Treatment Works (the TWWTW) and its consequences for future housing supply; and the specific housing supply forecasts for seven sites.

### *OAN*

35. The Report on the Examination into the Chichester Local Plan dated 18 May 2015 found the District's OAN to be at the top of 560-570 dwellings per annum (dpa). This figure was based upon the government's up-to-date 2012-based Household Projections: England, 2012-2037 published in February 2015. Excluding the South Downs National Park, the Inspector considered the Plan should seek to provide 505 dwellings per annum. The Inspector noted that any increase in housing supply is constrained by various factors, including water treatment capacity and transport infrastructure. Subject to an early review of the Plan, the Inspector was satisfied that a Plan target of 435 dwellings per annum demonstrates a positive approach to maximising delivery of new housing and that the Council can demonstrate a five year housing land supply on that basis.
36. In contrast, the appellant contends that the requirement should be assessed with reference to a full OAN of 505 dpa.
37. The Guidance makes clear that housing requirement figures in up-to-date, adopted Local Plans should be used as the starting point for calculating five year supply. It advises that considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light.
38. The Council has an up-date housing requirement very recently established as part of a formal development plan process. I recognise that 435 dpa is a 'policy-on' figure short of the District's full OAN but it is, nonetheless, that formally and very recently endorsed as the authority's five-year housing

requirement through the relevant development plan process, and I consider that to be the appropriate figure for assessment.

*Relevant period for assessment of the five year housing supply*

39. The appellant maintains the five period should cover the years 2015-2020 so as to accurately reflect currently available data of actual delivery. In support, reference is made to appeal decisions relating to sites in Waterbeach, Cambridge (Appeal Refs: APP/W0530/A/13/2207961 dated 25 June 2014, and APP/W0530/A/13/2209166 dated 25 June 2014). Amongst other matters, these decisions underline the significance of up-to-date, actual housing completion figures available at the time rather than future conjecture, although I note that both decisions also pre-date the report of the Local Plan.
40. Even so, neither the Framework nor the Guidance provides any explicit advice as to whether the five year period should be considered from the start of the most recent monitoring period, or from the next forthcoming date, and I find issues with both approaches. Taking the period 2015-20 would not cover a full forward looking five year period, but taking 2016-21 would not be consistent with references in Footnote 11 of the Framework to site circumstances as existing now.
41. Evidence was provided by the Council dating from 2008 and 2010 in the form of relevant, albeit out-dated, government advice. This clearly indicated that authorities needed to demonstrate a five year supply of deliverable sites going forward. This would also be consistent with the current Guidance which states that local planning authorities should have an identified five-year housing supply at all points during the plan period.
42. The Council explained how the selected reporting period reflects its current methodology consistent with previous advice and in the absence any clear prescription to the contrary. It also explained how the first year is, in any case, likely to reflect dwellings under construction and thereby offer greater robustness than forecasts for other years.
43. The appellant highlights that 'present year' completions were 126 less than the previously forecast 477, and that shortfall is accounted for as part of the District's overall calculations. A completion figure of 351 dwellings is expressly included for 2014/15. I also note the Council's explanation of the particular reasons why actual completions fell short of the Council's forecasts in the last two years. Further, the Council's alternative calculations for 2015-20 still show a surplus of housing land for that period and, in overall terms, I am satisfied by the Council's approach.

*Delivery rates*

44. The Guidance advises local planning authorities to adopt a range of inputs and sources which should lead to a robust assessment of land availability.
45. The Council's figures reflect local site-specific information, including development phasing information directly provided by site promoters and developers.
46. The appellant questions the robustness of this approach and, in particular, suggests it creates over-optimistic development lead-in times and over-optimistic annual sales rate forecasts. I note this view is borne of

considerable experience and knowledge of the house building industry, including in the local area.

47. The appellant has put forward an alternative analysis which draws upon corporate reports and accounts backed up with independent conversations with national, regional and local developers and local agents. This analysis predicts an average, private sales rate, per sales outlet, per annum of 31 dwellings and a total site delivery of 45 dwellings per annum, including affordable housing. This further contributes to the appellant's assertion that the Council's trajectory for housing delivery is over-optimistic, and is highlighted with reference to discussion of individual sites. Nevertheless, the Council has affirmed its forecasts and which I consider to be based upon reasonable, up-to-date data.

*TWWTW*

48. Until the upgrade is completed, the Council contends there is only limited waste water capacity to support housing development in the Chichester/Tangmere area. At the time of the Local Plan examination, Southern Water projected the upgrade would be operational from 2019 but is now programming completion by December 2017.
49. The appellant has provided evidence to question the timescales now being proposed, and particularly the issue of connections to the upgraded facility. The appellant considers the timescale put forward to be overly optimistic and unduly vague. The Council has provided evidence, however, that its housing trajectory for development of the Westhampnett, West of Chichester and Tangmere Strategic Development Locations (SDL's) will be unaffected by this revised programme. I am satisfied, from the arguments presented, that the Council's forecasts still appear realistic.
50. The appellant also suggests that the now proposed earlier completion of the TWWTW removes one of the fundamental reasons for the Local Plan Inspector to adopt a suppressed housing requirement of 435 dpa, and that the Council has not 'unconstrained' its housing requirement accordingly. In response the Council has explained that the infrastructure constraints upon which the suppressed figure was based were more widely drawn. Further, that figure forms part of the statutorily adopted Local Plan and arrangements are in place for that to be formally reviewed as part of a necessarily wider process in due course in accordance with the Local Plan Inspector's recommendations.

*Specific housing supply forecasts for seven sites*

51. The appellant has challenged the Council's trajectory in relation to seven specific sites, and maintains the Council's figures in relation to each to be over-optimistic.
52. Footnote 11 to the Framework states that, to be considered deliverable, housing sites should be available now, should offer a suitable location for development now, and should offer a realistic prospect that housing development will be delivered on site within five years. Development should also be viable.
53. The Guidance further advises that planning permission or allocation in a development plan is not a pre-requisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust,

up-to-date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.

54. Land west of the Saltings (Site 2) is not available now as required by Footnote 11, and may require compulsory purchase action in order to effect development. Accordingly, I am reluctant to consider it to be a deliverable site, but it only accounts for some 15 dwellings.
55. Sites at Greylingwell (Site 7), Shopwhyke (Site 30) and South of Greylingwell Drive (Site 53) are contended to reflect over-optimistic delivery rates above the national norm. This assertion also reflects discussions with the relevant housebuilders.
56. West of Chichester SDL (Site 49) is subject to objections from the Environment Agency and Highways England. There appears to be no clear timescale for resolution, and further questions may arise regarding viability.
57. Westhampnett SDL (Site 50) is subject to outstanding third party objections, and it remains to be seen how current issues relating to an appeal and a section 106 agreement may be resolved.
58. Tangmere SDL (Site 52) involves three separate land ownerships and outstanding issues of drainage. The appellant has also suggested that the developer may not significantly invest in infrastructure and housing until completion of off-site works relating to the TWWTW.
59. Whilst I acknowledge the potential impediments identified by the appellant towards these sites, I consider that, on balance, reasonable overall prospects for development still remain.

*Five year housing land supply: findings and implications*

60. Notwithstanding the detailed submissions from both the main parties as described, the existence of a recently adopted statutory Local Plan with an agreed and up-to-date housing requirement is a matter to which I attach considerable importance as indicated by the Guidance. Further, the report of the Local Plan pre-dates this inquiry by a mere matter of months and the Plan is intended to serve an expected life of fifteen years.
61. The Council's most recent assessment of its five-year supply suggests a potential housing supply of 3297 dwellings over the period 2016-2021, compared with an identified housing requirement of 2987 dwellings. This results in a surplus of 310 net dwellings based upon a requirement of 435 dpa, equivalent to 5.5 years of housing supply. Whilst a constrained figure, the wider sustainability of development within the District would also have been a relevant and significant consideration of the Local Plan Examination.
62. The appellant maintains, however, that assessment for the period 2015-20, and with reference to a full OAN of 505 dpa, gives a total five-year housing supply of 2590 dwellings, compared with an identified housing requirement of 3816 dwellings. This results in a shortfall of 1226 dwellings, equivalent to 3.4 years of housing supply.
63. The appellant's assessment for 2015-2020 based upon the Local Plan requirement of 435 dpa shows a total five-year housing supply of 2590 dwellings, compared with an identified housing requirement of 3144 dwellings.

- This results in a shortfall of 554 dwellings, equivalent to 4.1 years of housing supply.
64. Whilst noting the optimistic explanation of the Council's future housing trajectory, I am also mindful of the Council's historic under-performance. In each of the six years up to and including 2014/15, housing delivery in the District fell significantly short of the adopted requirement, averaging 327 completions against targets of 480 and 435.
  65. The Council's latest update does suggest, however, an improved housing land supply position compared to that accepted by the Local Plan Inspector (a surplus of 310 net dwellings compared to a shortfall of 6 dwellings in December 2014). This largely reflects the expected contribution of the four SDL's allocated in the Local Plan, higher numbers of dwellings now subject to planning permission, and progress in the preparation of five neighbourhood plans.
  66. As affirmed by the Court of Appeal in *Hunston v SS CLG* [2013] EWCA Civ 1610, it is not the purpose of a section 78 appeal to formally determine an authority's OAN, its housing requirement, or its available five-year housing land supply. That exercise is a legitimate part of a wider and more elaborate development plan process. It is necessary, however, for me to take a considered view, on the basis of the available evidence, as to whether the expectations of the Framework are likely to be met in those regards in order to weigh the appropriate implications for this particular appeal development.
  67. The evidence presented by the appellant does raise credible questions regarding some site-specific data and accompanying delivery rates presented by the Council to this appeal. In light of the appellant's evidence, I acknowledge the Council's figures may be over-optimistic. Nevertheless, I do not consider the Council's overall figures and accompanying assessment to be fundamentally flawed or so unreasonable for me to conclude that a five year supply of housing land does not exist.
  68. The Council has an OAN only very recently established through its Local Plan process and the authority was able to formally demonstrate a five-year housing land supply as part of that process based upon up-to-date information. The full details of the evidence which led to that conclusion are not before me, and nor is it the purpose of this appeal to revisit conclusions more appropriately reached as part of that separate development plan process. The Council has provided evidence in support of its position, however, and further evidence to suggest an improved housing delivery outlook since that time.
  69. The Council's supply figures for 2016-21 include a 20% buffer to reflect previous under-performance and both parties agree that historic shortfalls should be addressed over the next five years in line with the Sedgefield approach. This buffer accounts for some 498 dwellings and there is a surplus against the Local Plan housing requirement of some 310 dwellings. The Council has offered a reasonable, up-to-date trajectory of future supply drawing upon the Local Plan findings and I find it is not improbable that delivery could be achieved.
  70. I accept that the Council will need to deliver a significant improvement upon historic performance over the coming five year period, but that it has reasonable grounds for optimism in that regard given the findings of the Local

Plan Examination reached in light of a full and proper assessment of all relevant evidence, and the Council's more up-to-date site-specific forecasts. This up-to-date assessment, coupled with the recentness of the process through which the Council's OAN has been formally and robustly examined and identified, leads me to conclude that the Council remains able to demonstrate a five year housing land supply. Whilst I find it possible that the Council's actual delivery may be below that forecast, I cannot conclude that it would be to such a degree for the authority to be unable to deliver a five-year supply.

71. Accordingly, it also follows, by virtue of paragraphs 47 and 49 of the Framework, that relevant policies in the development plan for the supply of housing are not to be considered out-of-date. Relevant provisions of the presumption in favour of sustainable development under paragraph 14 of the Framework would still be engaged should the scheme be found to constitute sustainable development.
72. All that said, however, the Council is still seeking to deliver a suppressed housing requirement and one significantly below an acknowledged full OAN, and I deal with that particular matter further, and with the significant weight to be attached, as part of my overall planning balance to follow.

### **Other Matters**

73. I have carefully considered all other matters raised, both at the inquiry and in written submissions.
74. A number of matters have been raised by third parties, including traffic impacts, implications for local services and infrastructure, possible consequences in connection with flooding, air quality, over-development, loss of agricultural land, the relationship to the Earnley Conservation Area, and the effect upon the living conditions of neighbouring residents. These and other matters have not been raised as objections by the Council, and I have considered the relevant evidence submitted by both the main parties. I have little reason to conclude that such matters represent grounds to preclude development. Besides, this is an outline application with all matters other than access reserved for subsequent approval should the appeal be allowed.
75. I have noted the scheme has been assessed as not to involve Environmental Impact Assessment (EIA) development.
76. I have also had regard to all other planning decisions and appeals as referred to in the submitted evidence, and to all other considerations raised at both the inquiry and in written evidence.

### **Section 106 agreement**

77. The section 106 agreement makes commitments to various matters. These include provision of affordable housing, and contributions for community facilities, sport and leisure, recreation disturbance mitigation, open space, sustainable drainage, public art, and for library services, for Selsey Tram improvements, for various highway and traffic matters, and for police and fire services.
78. The Council has provided evidence of compliance with the relevant statutory provisions set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 in the form of its Statement of CIL Compliance,

and subsequent Supplementary Statement. Reference has also been made to the Council's Final Planning Obligations and Affordable Housing Supplementary Planning Document November 2015 and to accompanying policies.

79. The Council confirmed at the inquiry that it is satisfied with the form and drafting of the agreement as a deed, and both main parties raise no issues with its content.
80. I have had regard to the Framework, and to the relevant advice of both of the Guidance, and of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published July 2015, and am satisfied that the terms of the agreement meet the relevant tests and requirements.
81. I also note clause 14 of the agreement which identifies contingency arrangements in the event that the Council may adopt a Community Infrastructure Levy Charging Schedule prior to this decision.
82. Accordingly, I take the obligations set out in the agreement into account as considerations of my decision.

### **Dimensions of sustainable development**

83. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.
84. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.
85. The scheme would undoubtedly provide considerable housing benefits, and not just in terms of affordable housing, but also in terms of market provision, and such benefits would be consistent with the social dimension of sustainable development. The scheme would provide 44 affordable dwellings, 11 more than the 30% contribution required by Policy 34 of the Local Plan, and in an area with an identified unaddressed need.
86. The Council maintains the development would be at odds with other aspects of the social dimension of sustainability in the absence of support through the Neighbourhood Plan. It maintains the development would not happen in accordance with the development strategy approved in the very recently adopted local plan and would thereby fail to develop a shared vision for the neighbourhood and to deliver the sustainable development needed. Whilst I acknowledge the absence of a neighbourhood plan as envisaged, the planning history of the site and of the recently adopted Local Plan have provided significant opportunity for the public to contribute views directly to relevant matters and, for the reasons already described, I am unable to identify any specific material harm arising from the scheme itself.
87. The investment represented by the development would also be consistent with the economic dimension of sustainable development.
88. There is also no dispute between the main parties that the location is, in principle, a sustainable one.

89. In environmental terms, the site carries no particular designation, and no objection is raised by the Council on that basis.

### **Development plan**

90. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 (the Act), requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. This requirement is further set out in paragraph 12 of the Framework.
91. The appeal site lies outside the restrictive Settlement Boundary identified in the Local Plan, but Policy 2 acknowledges that such Boundaries are to be reviewed as part of the development plan process.
92. Policy 24 identifies a need for 180 new dwellings in East Wittering and Bracklesham and the development would be consistent with that expectation, and the Council accepts that 180 new dwellings could not be developed within the existing Settlement Boundary which dates from 1999.
93. For the reasons stated, I find no material harm would arise in relation to the expectations for masterplanning set out in Policy 7.
94. Whilst technically forming part of the countryside defined by Policy 45 and contrary to its restrictive approach to development, Policy 45 is not cited in its reason for refusal, and nor does it appear within the Council's list of 'applicable' policies defined in its Committee report. In this regard, I particularly note the relevance of the proposed review of Settlement Boundaries and the commitment to 180 new dwellings and therefore attach little weight to the Policy.
95. The scheme would exceed the requirements of Policy 34 for affordable housing.
96. The development would not be contrary to any provisions of the Neighbourhood Plan as this does not exist.
97. Whilst the site is not identified for development within the very recently published Allocation DPD, I can only afford this document very limited weight given its emerging status.
98. The scheme would involve a procedural inconsistency with Policy 24 which identifies the need for an on-going process of neighbourhood planning as a fundamental part of implementing the development strategy of the Local Plan. For the reasons explained, I find the harm arising in that regard, given the extensive history of the site and the absence of any material harm arising from the intrinsic merits of the proposal itself, would be very limited.
99. In summary, the development does not comply with the procedural expectations of Policy 24, but I find the scheme is otherwise broadly in accordance with the development plan when considered as a whole.

### **Overall planning balance**

100. I therefore conclude, having regard to the expectations of the Framework as a whole, that the proposed scheme would be sustainable development. Accordingly, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged, and this has two possible implications. Firstly, unless material considerations indicate otherwise,

paragraph 14 makes a presumption in favour of approving proposals that accord with the development plan without delay. Secondly, it states that, where the development plan is absent, silent or relevant policies 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.

101. The Council's acknowledged five-year housing land supply is based upon a constrained figure of housing need significantly short of its full OAN. That situation was accepted in light of infrastructure constraints but the outstanding need over and above 435 dpa remains. The proposed scheme would make a significant contribution to that unmet need. Further, given the absence of any objections by the Council in relation to environmental, highway or other infrastructure impacts, the constraints more broadly applicable to its Local Plan housing requirement as a whole do not apply in this instance and I find no reason why the development should not be seen as a legitimate and necessary contribution towards meeting the area's full housing needs and in a timely manner.
102. The only material conflict with the development plan is a procedural one in relation to a non-existent Neighbourhood Plan.
103. The very early stage of the Neighbourhood Plan process would also mean that a planning permission for the appeal site could be assimilated as part of any such plan-making process if and when it emerges. Whilst the permitted scheme of 50 dwellings at Beach Avenue would only leave a further 20 dwellings to be identified within the limitation of Policy 24, the Neighbourhood Plan would still have other matters and issues to address, and including facilities to support a further 20 dwellings. The plan-making process is not static and the Framework makes clear cannot be held in undue abeyance.
104. There is dispute between the parties as to whether the 50 dwellings at Beech Avenue should count against the threshold figure of 180 but, either way, the appeal scheme would not exceed the total so far permitted from the evidence of sites presented. The scheme would represent a medium-scale extension of the Settlement Hub as anticipated by the development plan.
105. I am conscious of the primacy of the development plan and, whilst the Local Plan offers a valid procedural aspiration in terms of implementing a development strategy, it is not one which, in the round, stands upon to scrutiny as a valid objection in this instance.
106. Having overall regard to the development plan as a whole in the terms of section 38(6), I consider that the balance of other material considerations is such that planning permission should be granted.

### **Conditions**

107. I have considered the agreed list of conditions put forward by both parties to the inquiry. In assessing such matters, I have regard to the advice set out in both the Guidance and in the Framework in terms of both the need for individual conditions and of appropriate wording.
108. For the avoidance of doubt and in the interests of proper planning, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings. Whilst the submitted drawings to be approved set

out general principles of the access, full details of its design remain to be submitted and are required for agreement by the local planning authority.

109. To protect the living conditions of neighbouring occupiers during construction, it is necessary to limit the hours of construction works and for the works to be undertaken in accordance with a Construction Method Statement. Whilst I have no clear evidence of site contamination, it is still necessary to safeguard the living conditions of future occupiers of the development by ensuring that appropriate arrangements are made for identification and treatment of any on-site contamination which may be present.
110. To contribute to a sustainable development, conditions require details to be submitted and be approved by the local planning authority relating to surface and foul water drainage, to water discharge, and to flood mitigation, to the implications for watercourses, and relating to associated implications of topography for future floor levels.
111. To promote sustainable transport, a condition requires implementation of a Travel Plan. To safeguard any heritage value of the site, a condition requires a scheme of archaeological investigation. To safeguard the ecological value of the site, a condition requires arrangements to be in place to safeguard the environment of water voles. A condition is also required for an information pack to be distributed to all new residents explaining the importance and sensitivity of the nearby Special Protection Area, and to thereby safeguard and promote its significance for future residents.
112. The Statement of Common Ground suggested a condition in relation to materials, but appearance is reserved. A condition was also suggested to clarify the status of supporting information accompanying the application, but that is also unnecessary and is otherwise obviated by the specific terms of Condition 4.

### **Conclusion**

113. At the heart of the Framework is a presumption in favour of sustainable development. I find the proposed scheme would comply with that expectation having regard to the development plan and to the Framework as a whole, and that a grant of planning permission would accord with section 38(6) of the Act.
114. For the above reasons, the appeal is allowed.

*Peter Rose*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

### **General**

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and be approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved drawings: Site Location Plan Ref: S201; and access plan Ref: ITB7076-GA-034 Rev A.

### **Pre-commencement**

5. No development shall commence until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and been approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and in accordance with an agreed programme. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and be approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures in accordance with details and a programme of works to be approved in writing by the local planning authority.
6. No development shall commence until full details of the proposed sustainable surface water drainage scheme have been submitted to and been approved in writing by the local planning authority and a programme for the works, and including arrangements for subsequent management. The details shall also include measures to prevent surface water draining onto the public highway. The scheme shall be implemented in accordance with the agreed details, and in accordance with the agreed programme.
7. No development shall commence until such time as arrangements for the future access and maintenance of any watercourse or culvert (piped watercourse) crossing or abutting the site have been submitted to and been approved in writing by the local planning authority. No development shall commence until details of satisfactory arrangements for the discharge of any

flows to watercourses, or the culverting, diversion, infilling or obstruction of any watercourse on the site have been submitted to and been approved in writing by the local planning authority.

8. The development shall only be carried out in accordance with the submitted Flood Risk Assessment (submitted Doc 04) and the accompanying flood mitigation measures detailed therein. The flood mitigation measures shall be fully implemented in accordance with a programme to be submitted to and be approved in writing by the local planning authority prior to the commencement of any development.
9. No development shall commence until full details of the proposed means of foul water sewerage disposal have been submitted to and been approved in writing by the local planning authority, and the details shall be implemented as approved and in accordance with an agreed programme.
10. No development shall commence until a topographical survey has been submitted to and been approved in writing by the local planning authority. The finished floor levels of the dwellings shall be a minimum of 4.8 metres above the ordnance data (AOD) identified in the survey.
11. No development shall commence until an archaeological investigation of the site has been carried out in accordance with a specification to be submitted to and be agreed in writing by the local planning authority. The specification shall include proposals for an initial trial investigation and for mitigation of damage through development to deposits of importance thus identified. The investigation shall be undertaken by an appropriately qualified archaeologist in accordance with an agreed programme, and shall include the recording of findings and subsequent publication of results.
12. No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to and been approved in writing by the Local Planning Authority. The approved Statement shall be implemented and adhered to throughout the construction period. The Statement shall include details of the following matters:
  - (i) parking of vehicles of site operatives and visitors;
  - (ii) loading and unloading of plant, materials and management of waste;
  - (iii) storage of plant and materials used in constructing the development;
  - (iv) erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
  - (v) provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders);
  - (vi) measures to control the emission of dust and dirt during construction;
  - (vii) turning on site of vehicles;
  - (viii) location of any site huts/cabins/offices;
  - (ix) the method of access and routing of vehicles during construction;

- (x) details of public engagement both prior to and during construction works;
- (xi) facilities for the storage of oils, fuels or chemicals.

13. The development of the site shall only be carried out in full accordance with the submitted Water Vole Mitigation Strategy dated April 2014. A buffer zone (five metres from the edge of the ditch and fenced) along the ditch networks on site shall at all times be retained for the water vole habitat area in accordance with a plan to be submitted to and be agreed in writing by the local planning authority prior to the commencement of any development and no residential curtilage shall at any time encroach into this area.
14. No part of the development shall be occupied until such time as the vehicular access serving the development has been constructed in accordance with a detailed design to be submitted to and be approved in writing by the local planning authority in accordance with drawing ITB7076-GA-034 Rev A. The access shall be constructed in accordance with the details and a programme of works to be agreed in writing by the local planning authority, and such details shall be agreed prior to the commencement of any development.

#### **Other**

15. The construction of the development and associated works shall not take place on Sundays or Public Holidays or any time otherwise than between the hours of 0730 hours and 1730 hours Mondays to Fridays and 0900 hours and 1300 hours on Saturdays.
16. No part of the development shall be occupied until a Travel Plan has been submitted to and been approved in writing by the local planning authority. The Travel Plan once approved shall thereafter be implemented as specified within the approved document.
17. An information pack shall be distributed to all future residents in accordance with an agreed programme explaining the importance and sensitivity of the nearby Special Protection Area and suggesting ways in which residents can reduce their impact on it. This pack shall have been previously submitted to and been agreed in writing by the local planning authority.

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Gwion Lewis of Counsel                      Instructed by Nicola Golding, Principal Solicitor,  
Chichester District Council

He called:                                      Fjola Stevens, BA (Hons), MA, MRTPI,  
Principal Planning Officer

Robert Davidson, BA, MA MRTPI, Principal Planning Officer, also provided evidence and contributed to the round table discussion of specific sites in relation to five-year housing land supply on behalf of the Council

### FOR THE APPELLANT:

Sasha White of                                      Instructed by Genesis Town Planning  
Queen's Counsel

He called:                                      Paul White, BA (Hons), Dip TP, MRTPI,  
Genesis Town Planning

Mark Hewett of Intelligent Land also provided evidence and contributed to the round table discussion of specific sites in relation to five-year housing land supply on behalf of the appellant

### INTERESTED PERSONS:

Robert Carey                                      Chair of Bookers Lane Residents Association and  
Earnley Parish Councillor

## **DOCUMENTS SUBMITTED TO THE INQUIRY**

### **By the appellant:**

1. Opening submissions by Sasha White, QC
2. Decision notice and application drawings
3. Hambrook appeal location plan
4. Remaining Sites in Dispute (location plan)
5. Wates Potential Projects (location plan)
6. East Wittering and Bracklesham Parish Council minutes of Steering Group 12 November 2015
7. East Wittering and Bracklesham Parish Council meeting agenda 10 December 2015
8. Chichester Local Plan Sustainability Appraisal of the Site Allocation: Preferred Approach Development Plan Document November 2015
9. Letter from Chichester District Council to East Wittering and Bracklesham Parish Council dated 17 December 2014
10. Email to Mark Hewett from Andrew Reynolds dated 7 December 2015
11. Draft application for costs
12. Table 7.2 of the Adopted Chichester Local Plan: Key Policies 2014-2029
13. Policy 7 of the Adopted Chichester Local Plan: Key Policies 2014-2029
14. Email from James Bevis to Paul White dated 9 December 2015
15. Application for costs
16. Closing submissions by Sasha White, QC

### **By the Council:**

17. Opening submissions by Gwion Lewis of Counsel
18. Letters from Chichester District Council dated 29 August 2014 and 13 March 2015 publicising modifications to the application
19. Extracts from the Adopted Chichester Local Plan: Key Policies 2014-2029 relating to housing need and affordable housing
20. Supplementary Statement of CIL Compliance
21. Response to appellant's application for costs
22. Closing submissions by Gwion Lewis

### **Jointly by the main parties**

23. Draft agenda for housing land supply round table session
24. Agreement under section 106 of Town and Country Planning Act, 1990

**By other parties:**

25. Location plans submitted by Robert Carey
26. Written statement by Geoffrey Breeze, Vice Chair of East Wittering and Bracklesham Parish Council, emailed on 6 December 2015, and written responses by both the main parties (appellant dated 15 December 2015, Council dated 16 December 2015)