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Ms Amy Myer
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27042/A3/IP
26th March 2021

Dear Amy

LAND AT NURSERY FIELDS, WEST BERSTED.
OUTLINE APPLICATION REFERENCE: BE/148/20/OUT

I write further to the email from James Cross dated 1st March 2021 and the draft heads of terms for the s106 agreement (HoTs) enclosed therewith. The approach of the Council is to consider the application against the adopted strategic allocation and policy SD3. The site is charged at zero rate in the adopted CIL charging schedule and accordingly, we are reliant upon s106 and/or conditions for the delivery of necessary mitigation and limitations arising from the proposed Nursery Fields scheme ('this application').

We have now received the planning permission for the Chalcroft Nursery site (LPA ref: BE/81/20/OUT), which is accompanied by the s106 dated 23 March 2021, entered into with the District and County Councils. ('The Nursery Permission'). This provides a useful basis for considering the HoTs for this application in that it demonstrates the approach that both Councils find acceptable, having also been considered by the Council as falling within Policy SD3 and assessed and determined on this basis.

The approach taken in the Chalcroft Nursery s106 is that contributions for off-site infrastructure (i.e. outwith the 'redline' of the planning permission) are to be derived from a pro-rata division of the total cost of that infrastructure from the 2,500 dwelling capacity 'allocation', with a series of triggers for the payment. Some elements will be provided by others within the spatial limits of the SD3 allocation, some elsewhere.

Phasing and Triggers:

The scheme the subject of the Nursery Permission is for mixed use (commercial and residential) and is of smaller scale, with the residential element likely to be built out in a single phase. At 225 units, the scheme the subject of this application is likely to be built out over a maximum of two phases. Whilst a phasing plan is not proposed for approval, it is useful to approach the obligation triggers in this respect to allow for market variability. We therefore propose that the triggers for contributions are set out on this basis, across two phases, at say 125 and 100 dwellings. We propose that the dwelling triggers are linked to private sale occupations as opposed to all tenures, as this will ensure that the timing of the delivery of affordable housing is not inadvertently affected by the s106 triggers. We would welcome your views on this approach.



Apportionment of Costs/Contributions:

The approach taken in the Chalcroft Nursery Permission s106 is to pro-rata costs on the proportion of the 2,500 homes within the SD3 allocation. At 20 homes, the 'contribution' at 0.8% was minor. Even at 225 units, this application represents some 9% of the SD3 allocation. That said, it may well be the case that the wider area within the allocation delivers more dwellings, either as part of an initial outline application or subsequent revisions or stand-alone applications. As always, we can over complicate matters and the Council cannot of course fetter itself in determining any such future applications. Landform is content to continue the approach established in the Chalcroft Nursery s106, within any substantial increase in the wider SD3 land above the 2,500 allocation being determined on its merits, having regard to the mitigation and measures required to support it.

Off-Site Infrastructure:

The draft HoTs identify a number of different forms of infrastructure to be provided outwith the application, either within the wider SD3 allocation or elsewhere.

From the applicant's perspective, the mechanism is the same and requires the payment of contributions towards the costs identified, at agreed triggers, with a mechanism for delivery. Thus, whilst it maybe, for example, the preference for primary school needs to be met by a new school within the wider SD3 allocation, should this be delayed, then the County as LEA would no doubt wish to provide for educational needs elsewhere. This flexibility in approach appears consistent with the HoTs as drafted.

The contributions for education, health, libraries and fire and rescue follow a widely established approach, with a formula based on the final mix of homes to be provided. This is acceptable. The outstanding points are the triggers and the requirements upon delivery and the default position.

Highways matters fall into three areas:

- The delivery of on-site infrastructure, namely PROWs, walking and cycling routes, the new access road and access to the wider SD3 area.
- Contribution to local defined off-site works as identified in the TA and agreed with WSCC highways.
- Contribution to wider strategic improvements.

We would suggest that the starting point for the identification of these works and improvements is the Arun Transport Study which informed the mitigation identified in the TA that accompanies the application. WSCC as highways authority has agreed the TA and identified the package of measures required of the development.

On-Site: The approach to the on-site measures should follow a consistent approach of the detail of the scheme being agreed (ordinarily through RMs) and then for the implementation and retention of that scheme. Conditions may well be the appropriate mechanism in many respects, including the normal requirement for Section 278 and Section 38 Highway Agreements with the highway authority.

In terms of the connection to the wider SD3 area, as set out in the revised parameters plan PP01 Rev P4 dated 24 February 2021, as requested, the scheme makes provision for the construction of the access road to extend to the boundary of the site, at the point identified. Again, the detail of the road will be agreed through RMs with provisions for the offer of adoption. The timing of delivery of the road will be linked to the phased implementation of the scheme and the s106 should set out the terms on which connection should be offered. The assessments that accompany this application demonstrates that the access road and its junction with Chalcraft Lane can support circa 400 homes along with the commercial accommodation consented through the Chalcroft Nursery Permission and would support an early delivery of much needed new homes within the wider SD3 allocation.

Identified Off-Site Works: Off-site works that have been identified by the applicant and agreed by WSCC, and which will be implemented as part of the development, are to be secured through the Section 106 Agreement for implementation via Section's 278 and, where relevant, Section 38 of the Highways Act (1980). These works relate to the implementation of infrastructure required to facilitate access to the site associated e.g. pedestrian crossing improvements. These require standard S106 clauses that reference the drawings approved as part of the planning application.

Off-Site Strategic Works: The responses from your statutory technical consultees in relation to the management of the strategic road network (Highways England) and the local road network (WSCC), has specified that financial contributions, in accordance with the WSCC/ADC Local Plan Transport Mitigation Apportionment Study (June 2020), are required from the development. In addition to this, WSCC has identified the need for the application to contribute towards other specific cycling infrastructure. Triggers for the payment of these Apportionment Study and Cycle Infrastructure contributions will be agreed with the relevant highway authorities to ensure the funding is made available at the appropriate time to enable the progression of the works associated with these contributions by the respective highway authority.

Spine Road to Serve Church Commissioners and Langmead Farm:

I note that the HoTs include provisions to contribute to the 'spine road' that serves the Church Commissioners land and Langmead Farm. Our TA agreed with WSCC demonstrates that we do not need this road to mitigate the impact of the scheme.

Affordable Housing:

I suggest that we follow the same approach as per the Nursery Permission, based on two phases.

I assume that the Church Commissioners may well wish to increase the level of affordable housing on site in light of the Archbishops' Commission on Housing, Church and Community recently published 'Coming Home' report. We assume that any such increase would be additional to the normal policy requirement.

Open Space:

The s106 should provide for the laying out of on-site open space and the transfer either to a management company (as per an agreed maintenance regime) or to the Council with an agreed maintenance sum, in accordance with an agreed detailed scheme and phasing. Strategic provision is off-site on the same basis as above: contribution to be paid on agreed triggers.

Self-Build and Custom Build:

I note your requirement for a proportion of dwellings to be provided from self-build or custom build plots. As requested previously, sight of the approach that the Council would find acceptable such as extracts from s106 agreements would be useful. Obviously, if you have not yet secured provision pursuant to the local plan nor have a template from which you work then please advise.

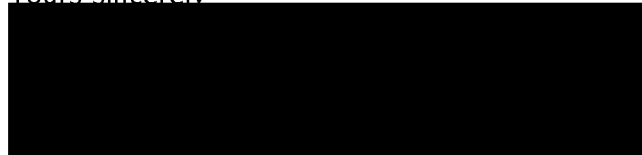
MoU:

I note that officers have also provided a draft MoU. We were sent v2 in November and note that the current draft is marked V4 and final. Whilst it would have been useful to have seen v3 (assuming there was a v3), the purpose of the MoU is to inform the agreement of the s106, the next stage of which would be HoTs. These we now have, and the MoU is therefore now superfluous.

Indexation:

I note that some of the per dwelling contributions have increased from those agreed in the Nursery Permission s106. I assume this is a function of indexation.

Yours sincerely

**IAIN PAINTING**

Senior Partner

cc: Claire Potts
James Cross
Erik Pagano

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27042/A3/IP
26th March 2021

Dear Amy

LAND AT NURSERY FIELDS, WEST BERSTED, LPA REF BE/20/148/OUT

I am writing further to my letter dated 26th February 2021. In that letter I advised that we would respond separately to the requests set out in your emails of 5th and 19th February that Landform should consider the provision of a gypsy and travellers' site and self-build and custom-build homes as part of the above extant planning application.

In the email dated 19th February, you raised a number of additional points, namely:

1. Brent Geese
2. Highways
3. Trees
4. S106
5. Self-build and custom build
6. Gypsy and Traveller Sites
7. Determination date

We have also received version 4 of a MoU relating to s106 matters (dated February 2021) and draft HoTs under cover of email dated 1st March 2021. These matters are addressed in a separate letter dated 26th March 2021.

We responded to you by letters dated 9th February and 26th February and we have yet to receive a response to either letter. We have also been provided with a copy of the response from WSCC as highway authority dated 23rd February addressing the points that you raised with us and the third party response by Pell Frischmann on behalf of the Church Commissioners. It is clear that the County Council does not support the assertions of the Council and nor those advanced by the Church Commissioners.

The Council continues to consider the application against the terms of the allocation policy SD3, and no mention has been made as to the activation of the presumption in favour of grant as per paragraph 11(d) of the NPPF. This approach is an erroneous one and a matter that I have raised verbally in our pre-application discussions.



Presumption in Favour of Grant

The Council cannot demonstrate a 5 year supply of housing land and fails the Housing Delivery Test. Based on the Council's own assessment, as per the latest AMR (2019/20), the 5 year housing land supply is estimated by the Council to be 3.3 years and therefore paragraph 14 of the NPPF is operative.

The crisis in housing land supply facing the district is underscored by the recent publication by DHCLG naming the councils that are being sanctioned under the 2020 Housing Delivery Test (HDT). The report dated January 2021 confirmed that the Council remains among the group of worst performing authorities with a score of only 61%. This is not new, the Council identified itself as a persistently underperforming authority in the preparation of the Arun Local Plan 2018. The plan has proved inadequate to meet the needs of the area and the Council should be energetically engaged in identifying sites suitable for immediate release to make the earliest possible contribution to overcoming the shortfall, not in finding excuses to delay their release.

The housing trajectory, (updated November 2020) on page 80 of the 2019/20 AMR issued in December 2020, identifies a reliance on the West Bersted site to deliver 422 units from 1st April 2020 to 31st March 2025:

0 completions in 2020/21
22 completions in 2021/22
50 completions in 2022/23
125 completions in 2023/24
225 completions in 2024/25

From 2025/26 onwards, the Council rely on 275 completions per annum.

Allowing for the approval of reserved matters, site set-up and the creation of serviced land parcels, outline planning permission needs to be granted some 24 months in advance if this delivery programme is to be met.

It is unlikely, based on our analysis of other housing sites across the district, that the housing land supply position will improve in the short term and therefore the Council is reliant upon sites such as Nursery Fields to help meet its housing needs. This underscores the need to make every effort to commence development on this allocation as soon as possible. The immediate release of this medium size site is the only identified option for securing early completions on this allocation, over and above the 20 homes permitted as part of the mixed use scheme to the south at Chalcroft Nursery (LPA ref: BE/81/20/OUT).

Para 11 (d) of the NPPF establishes the presumption in favour of grant of permission to applications that depart from the Local Plan where the relevant policies are not up to date. Footnote 7 advises that a plan is not up to date where a 5 year housing supply is not maintained, or where the housing delivery test is not met; we believe it to be common ground that the Council fails both.

We do not agree with the assertion that the proposals, as set out in the application, depart from the Local Plan. They are consistent with the 'endorsed masterplan' as required by SD3. Moreover, robust technical assessment has been submitted in support, which inter alia, has been agreed by the County Council as highway authority.

There is no policy requirement that the individual parcels comprised in the allocation come forward in a single application or in any particular sequence. This is a matter which West Sussex County Council as local highway authority has drawn to the attention of the Council in its responses to this application (see responses dated 13th January, 28th January and 23rd February). In these responses WSCC also state, quite unequivocally, that in the context of NPPF 109 *"WSCC highways are satisfied that the development as proposed would not result in a severe impact"* (13th January) and *"it is the view of the WSCC highways that the implications of BE/148/20 should be considered on its own merits with the submitted TA adequately addressing the potential traffic increases from the dwellings proposed"* (28th January).

It falls to officers, in considering and reporting the application to members, to acknowledge that the presumption in favour of grant under Para 11(d) is operative. We would be grateful for officers' response on this point.

Gypsy and Travellers' Site

You have asked that we consider provision of a gypsy and travellers' site pursuant to policy H SP2.

Policy H SP2 requires the strategic allocation to consider the delivery of an area as a site for Gypsy and Traveller accommodation.

There is no requirement in SD3 for such provision. SD3 requires applications to have regard to the endorsed masterplan. The masterplan was endorsed by the Council on 30th September 2020 and did not seek provision of a gypsy and travellers' site. Provision of this new land use would therefore be contrary to the endorsed masterplan. Furthermore, had the Council wished to secure provision and considered that the site was suitable, this should have been sought either at the masterplan stage or made an express requirement within the allocation itself.

The current application was the subject of extensive pre-application discussions and at no time did the Council or officers seek provision of a gypsy and travellers' site or ask for consideration thereof. Such an approach is consistent with the allocation and the masterplan.

It is important that the Council applies the policies in the Local Plan (where up to date) on a consistent basis. We have reviewed the provision of gypsy and travellers' sites and the current AMR reports that no provision was made in 2019/20.

We note that in reporting the outline proposals for Pagham (ADC ref: P/134/16/OUT), the only strategic site to be approved to date, officers advised:

"...no evidence has been submitted in support of the application detailing any considered of the incorporation of an area of Gypsy and Traveller accommodation. However, policy H SP2 only requires consideration and does not require inclusion and as such the proposal is not considered to conflict with policy H SP2 (p) and (q) of the Arun Local Plan".

The provision of a gypsy and travellers' site would fall outside of the scope of the extant planning application, being a sui generis use. The land is being promoted by Landform and the terms of which do not provide for promotion as a gypsy and travellers' site and the land has not been made available on this basis. This is consistent with SD3, the endorsed masterplan and the approach of the Council.

Landform and the owners have considered your request, notwithstanding the above, and can confirm that this remains their position.

We note that the Council engaged in a Regulation 18 consultation on the proposed Gypsy and Traveller Sites DPD in late 2020. The preferred option proposed by the Council was based on safeguarding the seven existing Gypsy and Traveller sites and the seven Travelling Showmen sites rather than allocating new sites. There was no proposal relating either to this site or the wider allocation within the draft DPD. In the circumstances it would be perverse to refuse this application on the ground that further consideration should be given to provision on the appeal site. The provision of such a site, if it were an appropriate and acceptable location, would come at the expense of much needed open market residential development (current shortfall of 3,480 homes in terms of 5 year supply against a Local Plan requirement for a total of 21 new gypsy and traveller sites under policy H SP5), which is not an outcome we can believe that the Council intends and would be contrary to its own strategy recently promoted in the draft DPD.

Should officers deviate from the endorsed masterplan and the approach taken in respect of Pagham, and instead determine that the application is contrary to the development plan, then any such alleged departure and reliance upon policy H SP2 falls to be considered under the presumption in favour of grant and part 11(d) of the NPPF. The application should be approved.

Self-Build and Custom Build

Self-build and custom-build fall within use class C3 and therefore, can be accommodated within the application as submitted. In their report to members recommending the approval of the masterplan, officers advised that:

“The Framework Masterplan highlights that ‘opportunities for self-build and community led housing will also be explored and consideration will be given to including an area dedicated to self-build plots as part of individual planning applications’. This approach is consistent with the approach advocated in the Arun Local Plan Policies and is therefore considered to be deliverable in nature”.

We note that the Council has not provided any plots since 2019, with 39 individuals and one association of individuals recorded on the Council’s self-build register as at March 2021. There is a wide spectrum of approach in terms of delivery in the custom build and self-build markets, and a range of contractual matters fall to be considered, including ensuring a cohesive design approach and ‘step in rights’ in the event of failure, as well as ensuring that a mortgage can be secured.

Landform is a member of the National Custom and Self Build Association (NaCSBA) and value the benefits that self-build and custom build can bring.

We have asked for examples of the approach that the Council would find acceptable however, to date none have been provided. Nonetheless, Landform are willing to consider the provision of up to 11 self-build plots (being 5% of the total plots) as part of the development, to be secured by condition.

We would suggest that the condition should operate on the following basis:

No later than the first reserved matters submission, the location of 11 self-build and/or custom build plots shall be submitted to the Council for approval. That submission will be accompanied by a self-build/custom build scheme, which will address the terms on which the plots will be offered, how design quality will be achieved, the timing of the release of the plots and how they will be marketed. There will also need to be a mechanism for the release of the self-build/custom build restriction in the event that demand does not materialise into sales.

Self-build and custom build plots are exempt from CIL. The site is zero rated for CIL and instead, the s106 mechanism is relied upon. We have set out our view in our letter dated 26 March as to how the off-site costs are apportioned and in theory, the self-build and custom-build plots could be argued to be outwith that calculation and £nil rated instead. However, such an approach generates additional complexity and Landform propose that the self-build/custom-build plots contribute to the pro-rata calculation as per the HoTs and our letter of 26th March.

Summary

1. This is an application for much needed housing land in an area which accepts that it is persistently under-performing with an admitted and substantial shortfall in the current five year period (only 3.3 years claimed against an annual requirement for the current period of 1,310 units per annum and a recent HDT score of 61%). This shortfall has grown exponentially since the adoption of the 018 as the shortfall then identified was 306 dwellings against the figure of 3,480 dwellings claimed by the Council in its latest AMR. We have not as yet scrutinised the claimed supply which is likely to be less than current estimates of the Council.
2. The presumption in favour of sustainable development set out in paragraph 11 NPPF is engaged. This requires the policies which are most important for the determining the application to be regarded as out of date and advises the grant permission unless either of the two well-known criteria are engaged.
3. Criterion 1 is plainly not engaged as there are no areas or assets of special protection which would provide a clear reason for refusing the development proposed. Insofar as mention has been made of potential harm to grazing habitat for Brent Geese, that concern has been comprehensively addressed in earlier submissions, which have been provided to Natural England and to which we are awaiting their response.
4. Criterion two is also not engaged. We are at a loss to identify from the Council's points of concern any identified adverse impact from the proposals which would demonstrably outweigh the benefits of the provision of the proposed housing following the parameters identified in the application. A site on this scale can make a valuable contribution to the supply of much needed new homes, including affordable, in the short term whilst the much larger residue of the strategic allocation moves forward.
5. This reasoning is reinforced by the observation that the site is, in any event, allocated for this form of development in the 2018 Arun Local Plan and completions from this allocation are relied upon in latest AMR for the current 5 year period between 2021 to 2026. To refuse the application is to put at risk the trajectory relied upon to provide the Council's claimed total of a mere 3.3 year housing land supply.
6. The application, in any event, complies with the relevant policies of the Local Plan. First, it conforms with the masterplan for the allocation endorsed by the Council on 30 September 2020. Second, it conforms with the allocation specific policy HSP2. The Council identifies concerns with two aspects of policy HSP2, namely provision of Self-Build and Custom Build Sites and of a Gypsy and Traveller site. Both are identified as matters for "consideration" only under HSP2. Neither were required as an express element of the masterplan which is the point in the process where they plainly should have been addressed if the Council regarded them as of importance. The Self-Build issue is in any event addressed above and can be accommodated in the usual way through the conditions and s.106 obligation related to the grant of permission. Reference to the Local Plan shows a very different scale of need for gypsy and traveller accommodation than that for housing, which is anticipated to be addressed, in the case of private provision on unallocated sites (Policy

HSP5) and on public sites through the policies of a DPD which has a preferred strategy promoted by the Council of safeguarding existing sites for expansion, rather than the reliance on new sites. To suggest that this a defect which would have adverse impact, let alone demonstrably outweigh the benefits of the proposed housing, does not stand up to scrutiny.

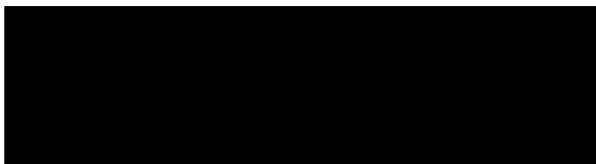
7. The reference to traffic issues is misconceived. First, the Highway Authority accept the proposals accompanying the application as being appropriate, and the form of access has itself been the subject of recent approval by the Council in the grant of permission to the Chalcroft Nursery application on 23 March 2021 and provides spare capacity. Second, mechanisms are proposed in the s.106 proposals for making an appropriate pro rata contribution to wider infrastructure requirements of the Local Plan derived from the Arun Transport Study and these are acceptable to the Highway Authority. Third, NPPF 109 advises that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The Highway Authority have unequivocally advised the Council that refusal on these grounds is not justified. There is a third party objection on the basis that the application site should be required to contribute to the cost of the provision of the spine road through the masterplan site and to the cost of any works required to bypass West Bersted. These works are not yet identified or costed, and neither are required for the release of the application site as confirmed by the highway authority. Such a requirement would not meet the test of necessity required by NPPF 56, even if it could be calculated at the present time (which it can't). As a result, there is no prospect of the Council being able to demonstrate that the threshold of NPPF 109 is met and no reason for refusal based on this ground would be capable of support at appeal.

We would be grateful for officers' response to this letter and indeed to our letters dated 9th February and 26th February.

You stated that our response was requested in order to inform the drafting of officers' report but to date, officers have not advised what officers' recommendation will be in light of the amendments submitted on 26th February and the other additional submissions made. It is our view that the application should be favourably recommended and that there is no basis for a recommendation or determination to the contrary, not least in respect of para 11(d) of the NPPF. Furthermore, officers should be seeking to favourably report the application and grant permission as quickly as possible in light of the housing land supply position.

We look forward to receiving your response to this letter and we would be pleased to discuss draft conditions in tandem with the HoTs.

Should the Council proceed to refuse the application, Landform will course review the approach to the s106 HoTs and provision of self-build/custom build housing in any appeal.



IAIN PAINTING

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cc: Claire Potts
James Cross
Erik Pagano