



Appeal Decision

Inquiry opened on 12 January 2010

Site visit made on 20 January 2010

by Joanna C Reid BA(Hons) BArch(Hons)
RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Decision date:
16 February 2010

Appeal Ref: APP/C3810/A/09/2112065

**Chalcroft Nursery and associated land, Chalcraft Lane, Bognor Regis,
West Sussex PO21 5TS**

- 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 Orchard Enterprises (Southern) Ltd against the decision of Arun District Council.
- The application Ref BE/47/09/, dated 5 June 2009, was refused by notice dated 12 August 2009.
- The development proposed is the demolition of all existing buildings and redevelopment of the site with up to 70 dwellings (up to 28 Affordable), public open space and strategic landscaping.
- The inquiry sat for 3 days on 12, 13 and 14 January 2010.

Application for costs

1. At the Inquiry an application for costs was made by Orchard Enterprises (Southern) Ltd against Arun District Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Procedural matters

3. The application was submitted as an outline application with access for consideration at this time. Appearance, landscaping, layout, and scale are matters reserved for future consideration.
4. The Council withdrew reason for refusal 3, regarding the Bognor Regis and Chichester Strategic Gap, as defined in saved Policy AREA10 in the *Arun District Local Plan 2003* (LP), on 12 October 2009. The appellant had submitted a planning obligation, in accordance with section 106 of the *Town and Country Planning Act 1990* as amended, for financial contributions towards education, library and fire service infrastructure, and affordable housing, which satisfies saved LP Policies GEN8 and DEV17. In consequence, the Council confirmed that reasons for refusal 4 and 5 had been withdrawn before the inquiry opened.
5. The remaining concerns of the Council, in reasons for refusal 1 and 2, are that the site lies outside the built-up area in the countryside, and that the land has not been allocated for residential development.

Main issue

6. From what I have said above, from my inspection of the site and its surroundings, and from the representations made at the inquiry and in writing, I consider that the main issue in this appeal is the effect that the proposal would have on the character and appearance of the countryside.

Reasons

The Development Plan

7. The Development Plan includes *The South East Plan – Regional Spatial Strategy for the South East of England* (SEP) and the saved Policies of the LP. SEP provides a long term spatial planning framework for the region up to 2026, and a spatial context within which Local Development Frameworks and Local Transport Plans can be prepared, as well as other strategies and programmes that have a bearing on land use activities. As part of the statutory Development Plan, the policies in SEP are material to decisions on individual planning applications and appeals. However, SEP does not descend into site specific issues or a level of detail more appropriate to the local level. The publication of SEP in May 2009 means that all of the saved policies in the *West Sussex Structure Plan 2001-2016* (SP) are no longer in force.
8. The Government's objectives for the planning system include that planning is a positive and proactive process, operating in the public interest, through a system of plan preparation and control over the development and use of land. From the evidence at the inquiry, the draft Core Strategy (CS) is unlikely to be submitted until the first half of 2011. Therefore, the saved LP Policies will remain important planning considerations until the CS is in place.
9. Saved LP Policy GEN2 defines the built-up area for the purposes of the Local Plan. By focusing development within urban areas and strictly controlling development in the countryside, it aims to promote sustainable development, which is the core principle underpinning planning. Although the built-up area was defined to take account of the development needs of the *West Sussex Structure Plan 1993*, which predated the SP, LP Policy GEN2 is an extant adopted policy for controlling where the urban areas end and the countryside begins within the District. LP Policy GEN2 was saved by the direction of the Secretary of State in September 2007. It has not been superseded by SEP.
10. Saved LP Policy GEN3 states that outside the built-up area the countryside will be safeguarded for its own sake. Development will not be permitted unless, amongst other things, it meets the operational needs of agriculture, forestry, or it is for quiet, informal recreation, or for the diversification of the rural economy.
11. The saving direction makes clear that the extension of saved policies is intended to ensure continuity in the plan-led system and a stable planning framework locally, and, in particular, a continual supply of land for development. Saved policies should be read in context. Where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy, and also new evidence, will be afforded considerable weight in decisions. It also draws attention to reflecting policy in Planning Policy Statement 3: *Housing* (PPS3). Although the housing numbers in SEP Policy H1, also referred to in SEP Policy SCT5, apply

now, no direct conflict was identified at the inquiry between the cited SEP Policies and LP Policies GEN2 and GEN3.

12. The main parties do not dispute that the proposal would be contrary to LP Policies GEN2 and GEN3. The appellant says that the built-up areas were defined to meet the needs of development, not to differentiate between the countryside and urban areas, and that LP Policy GEN2 is essentially a policy tool. However, paragraph 1.07 to LP Policy GEN2 explains that the built-up area boundary is important in setting a distinction between the built form of a main settlement and the surrounding countryside. LP Paragraph 1.08 adds that the built-up area boundary also serves to preserve the settings of existing settlements by protecting the surrounding countryside from unnecessary development.

The site and its surroundings

13. The appeal site is reached from Chalcraft Lane. Part of the site, including the access from Chalcraft Lane and the dwelling at 78 Chalcraft Lane, is within the built-up area, where development is acceptable in principle. The remaining substantially larger part of the site is outside the built-up area. It is thus within the countryside where, irrespective of whether or not it is nationally designated, national and local policy seeks strict control over development.
14. About a third of that area, near to and outside the built-up area boundary, and which broadly follows the back gardens of the adjoining dwellings, includes a garden centre, car parking, access, and an aquatic sales centre. The rest, which is furthest from Chalcraft Lane, includes rough mainly open ground and polytunnels. The latter area was defined as 'nursery' on 29 November 2007 in the Certificate of Lawful Use or Development dated 14 January 2008, ref BE/156/07/CLE.
15. The part of the site outside the built-up area adjoins a field and a cemetery with countryside beyond to the south-west, open fields to the west and north, and the built-up area roughly to the east. An indicative layout submitted with the application shows how the whole site could be redeveloped to provide 70 dwellings, landscaping and public open space.

Character and appearance

16. The built-up area near the site has a coherent edge, and the character of the countryside contributes positively to the setting of the settlement. Away from the built-up area, the mainly open countryside with occasional groups of farm buildings and isolated dwellings stretches out towards Chichester on one side of Chalcraft Lane, and the tightly knit mainly residential development in the built-up area is contained by the road on the other. To the north of the site, where the development is not wholly contained by roads, there is a distinct change in character where the countryside meets the urban area.
17. Across the countryside, and from the edge of the urban area, the few low-key buildings and polytunnels on the part of the site outside the built-up area can be seen through the overgrown hedges and infrequent trees which partly edge the site. Their character is plainly rural, in contrast to the buildings within the urban area. From the existing access to Chalcraft Nursery, and from the adjoining dwellings in the built-up area, the predominant openness across the main part of the site contrasts with the built-up character within the urban

- area. In other parts of the District, including Barnham, the built-up area boundary may not be so clearly visually defined, but it is plain to see here.
18. Due to its siting, its width, and its substantial depth, much of the proposed development would extend into the countryside beyond the generally consistent edge to the built-up area. The proposal, with its associated domestic paraphernalia and street lights, would be very noticeable from the edge of the built-up area, from the cemetery, and from the nearby public footpaths across the countryside. The development would not be for any of the specified uses in the countryside, and it would, in consequence, fail to safeguard the countryside for its own sake. It would be a sporadic development which would be poorly related to the built-up area, and it would be intrusive in the rural area. Thus, it would also harm the character and appearance of the countryside which provides the setting for the settlement.
 19. The proposed landscape buffers around the development would not mask its urban appearance. They would be out of keeping with the nearby countryside, where there are occasional hedges and few trees. They would also be at odds with the existing built-up area which offers a generally hard edge with little boundary vegetation to much of the surrounding rural area. Whilst the buffers would also satisfy an ecological function, an acceptable proposal should not need to rely on screening.
 20. The *Arun Landscape Study*, dated August 2006, identifies the North Bersted Matrix, within which the site is situated, as having moderate landscape sensitivity, slight landscape value, and medium/high landscape capacity. It was commissioned, as part of a wider series of studies, to assist work on the Local Development Framework and to inform decision making on where major development might be accommodated within the District. The scale of its findings is not therefore directly applicable to this relatively small site. It notes that the North Bersted Matrix does not make a significant contribution to the wider setting to Bognor Regis, but it also confirms the need to respond to site specific constraints. The proposal would blur the present definition between the urban and rural areas near the site, harmfully eroding their character and appearance, contrary to well-established planning principles.
 21. Of the various options for growth under consideration in the production of the CS, all accept that some development will take place on greenfield land. One option is for an arc of mixed use development, including housing, which would extend Bognor Regis into the countryside some distance beyond the appeal site. If that scheme were to come forward the context of the appeal site could change. However, as there are several options being considered, I can afford this little weight. Whilst paragraph 72 to PPS3 advises that schemes should not be rejected solely on the basis of prematurity, the harm that the proposal would cause to the local environment would also weigh against it. Even with the strategic housing allocations other smaller sites will also need to be found elsewhere, but, as in this case, they should be assessed on their merits.
 22. The site is, in common with many others within the countryside at the edge of the urban area, in a relatively sustainable location in terms of Planning Policy Guidance Note 13: *Transport*. This is not a sufficient reason, on its own, to allow unplanned developments outside settlements as it could lead to urban sprawl, contrary to the aims of sustainable development, which include the effective protection of the environment. Whilst there are also cemeteries in

urban areas, the open character of the cemetery next to the site respects the character of the rural area. I attach considerable weight to the harm that the proposal would cause to the character and appearance of the countryside.

Housing land supply

23. PPS3 seeks to improve housing delivery through a new, more responsive approach to land supply at the local level. It requires local planning authorities to identify and maintain a rolling 5-year supply of deliverable land for housing. Paragraph 68 states that the policies in the PPS are material considerations which may supersede the policies in existing Development Plans. Paragraph 71 adds that where local planning authorities cannot demonstrate an up-to-date 5-year supply of deliverable sites, they should consider favourably planning applications for housing, having regard to the policies in the PPS including the considerations in paragraph 69.
24. The main parties' assessments of the District's 5-year housing land supply shown in their joint statement are not comparable because they refer to different 5-year periods. The appellant's figures for the period 2009–2014 show a shortfall in housing land supply of about 30%. The Council's figures for the period 2010–2015 show a shortfall of about 5%. The appellant's figures are based on published data which is a little out-of-date. The Council's figures use a base date closer to the date of the inquiry which necessarily includes some estimates. The evidence given at the inquiry showed that the process of measuring housing land supply is not an exact science, but, from the evidence put to me, I prefer the appellant's assessment.
25. The economic downturn has had an understandable impact on housing completions. However, the Department for Communities and Local Government Chief Planner, in his letter of 12 May 2009 to Chief Planning Officers, seeks to ensure that planning is in a position to deliver housing when the upturn in the market happens. The proposed development of up to 70 dwellings would make a modest contribution. Also, the provision of 40% affordable housing, including 80% social housing and 20% intermediate housing, would exceed the proportion sought by saved LP Policy DEV17, and it could help to meet the acute need for affordable dwellings in the District. I therefore afford these considerations substantial weight.

Previously-developed land

26. Section 336 of the *Town and Country Planning Act 1990* as amended defines 'agriculture' as including horticulture, fruit growing, seed growing ... and ... the use of land ... as market gardens and nursery grounds. As I saw at my visit, the polytunnels are not in active use for agriculture, and much of the rest of the area indicated as 'nursery' in the certificate of lawful use or development is in an overgrown and untidy state. It can be tidied up and de-contaminated as necessary so that the agricultural use can continue. The advice in Annex B to PPS3 is that previously-developed land excludes land that is or has been occupied by agriculture or forestry buildings, so I consider that this part of the site does not amount to previously-developed land.
27. With regard to the remaining part of the site outside the built-up area, Annex B to PPS3 makes clear that there is no presumption that land that is previously-developed is necessarily suitable for housing development nor that

the whole of the curtilage should be developed. Whilst national, regional and local policy seek the efficient and effective use of previously-developed land, insofar as it concerns the part of the site outside the built-up area, I can afford it little weight in this appeal.

The suitability of the site for housing

28. I am satisfied that concerns raised about foul and surface water drainage could be dealt with by the imposition of suitably worded planning conditions in the event that the appeal were to be allowed. I also note that access to the site and the locality could be improved, there would be ecological improvements, that some public open space would be provided, and that the open market dwellings would be of a type identified by the Council needed to meet local demand. These are normal requirements sought by national and Development Plan policy.
29. National policy states that planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by, amongst other things, protecting and enhancing the quality and character of the countryside. The harm that the proposal would cause to the countryside would conflict with its suitability for housing, and thus with its environmental sustainability, contrary to the third consideration in paragraph 69 of PPS3. As the spatial vision for the area is being considered, and the proposal would be contrary to LP Policies GEN2 and GEN3, it would also fail to satisfy the fifth consideration in paragraph 69. For these reasons I can afford little weight to the suitability of the site for housing.

Appeal decisions

30. I have little information about the 3 appeal decisions which were referred to by the appellant, but they seem to differ in their details from the proposal before me. They all predate the publication of SEP and one was in a different District. SP Policy LOC2(c) *allowed for development which would not normally be acceptable outside built-up area boundaries where it is necessary to maintain the social and economic wellbeing of the County*. Whilst the thrust of this policy has been carried forward in SEP, it is for the CS to define where urban extensions will be, with public participation. I concur with my colleague in the later Lyminster appeal, ref APP/C3810/A/09/2103640, drawn to my attention by the Council, that *Until the Local Plan has been replaced by the emerging Local Development Framework ... 'saved' policies of the Local Plan continue to represent an important part of the Development Plan*.
31. Furthermore, in the Yapton scheme, appeal ref APP/C3810/A/08/2069053, its *scale would not enlarge the village unduly and would reinforce its established growth pattern*. By contrast, the proposal would be an incongruous extension to the built-up area. In appeal ref APP/C3810/A/08/2085759, at Wick, my colleague found that *the site fulfils none of the functions of the countryside and that it is effectively just an area of waste land between two housing estates*. However, I have found that the appeal site contributes to the mainly open countryside which is important to the setting of the built-up area. At Fishbourne, ref APP/L3815/A/08/2076467, the site would seem to have been contained by other existing development on 3 sides and *could be construed to be a form of infilling, and ... the A27 forms a natural boundary to both the village and further development*. By contrast, much of the appeal site is

surrounded on 3 sides by countryside. The latter 3 decisions are not, therefore, very helpful to me in this appeal which I must deal with on its merits.

Other matters

32. I have also had regard to the concerns expressed by local residents in writing and at the inquiry, which include the loss of employment at the site, the high proportion of elderly local people who benefit from the services offered by the existing businesses at the site, traffic congestion, highway safety, and other pressure on local infrastructure. I also note that these were not concerns of the Council in their reasons for refusal, and I see no reason to disagree. Other legislation exists to deal with private leases. The advice of its officers cannot bind the decision of the Council.

Conclusion

33. In reaching my conclusion, whilst there are material considerations which weigh in favour of the proposal, they do not indicate otherwise than that the proposal should be determined in accordance with the Development Plan. I conclude that the proposal would harm the character and appearance of the countryside. It would be contrary to saved LP Policies GEN2 and GEN3. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna C Reid

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anne Williams of Counsel,
instructed by Delwyn Jones, District Solicitor,
Arun District Council.

She called Geoffrey Gardner MSc MRTPI MCIWM DMS,
Director, Hives Planning Ltd.

FOR THE APPELLANT:

Graeme Keen of Counsel,
instructed by Paul P Collins BA(Hons) DipTP MRTPI.

He called Paul P Collins BA(Hons) DipTP MRTPI,
Director, PPC Planning & Property Consultants Ltd.

INTERESTED PERSONS:

T C Frears Local resident and representative of 7 local residents
and customers of Chalcroft Nursery, with the support
of the Bognor Regis District Chamber of Commerce.

Roxanne Saunders Manageress, Chalcroft Nursery.

John Covell Chairman, Aldwick Preservation Society.

Councillor Mrs Ann Smee District and Bersted Ward Councillor.

Councillor Simon McDougall County, District and Parish Councillor.

Councillor Brian Green Vice Chairman, Bersted Parish Council.

Simon Harris Local resident.

Reverend Frank Jones Local resident.

DOCUMENTS PUT IN AT THE INQUIRY

- 1 Statement relating to the 5 Year Housing Land supply position for Arun District, put in jointly by the appellant and the Council.
- 2 Supplementary statement with appendices, put in by the appellant.
- 3 Letter from the Government Office for the South East dated 8 October 2009, put in by the Council.
- 4/1 Communities and Local Government Planning Statistical Release *5 Year Land Supply for Housing in England as at April 2009* dated November 2009, and

- 4/2 Table 2 Proportion of '5 year land supply' identified, by local planning authority, at April 2009, put in by the Council.
- 5 Opening statement on behalf of the appellant.
- 6 Opening statement on behalf of the Council.
- 7 Extract from the *Arun District Local Plan 2003* Proposals Map and Key, in colour, put in by the Council.
- 8 Existing Site Plan dated 12 January 2010, scale 1:250, sheet 1, put in by the appellant.
- 9 The Council's notification of the inquiry and the list of persons notified.
- 10 Email from R A Ansley dated 28 September 2009, put in by the Council.
- 11 Letter from The Planning Inspectorate dated 14 December 2009 and letter from A P Smith dated 10 December 2009, put in by the Council.
- 12/1 Statement made by T C Frears, with a paper about flooding, and an
12/2 annotated decision notice from the cabinet meeting on 20 August 2007
12/3 regarding Chalcraft Lane Cemetery – Drainage.
- 13 Statement made by Roxanne Saunders.
- 14 Statement made by John Covell on behalf of the Aldwick Preservation Society.
- 15 Statement made by Councillor Mrs Ann Smee.
- 16 Statement made by Councillor Brian Green on behalf of Bersted Parish Council.
- 17 Extract from agricultural land classification map, put in by the Council.
- 18 Appeal decision ref APP/C3810/A/09/2103640, put in by the Council.
- 19 Location plan showing the site of the Bognor Regis Eco Quarter proposal, put in by the Council.
- 20 Advisory note to all staff - 9 March 2007 – H Cheadle, regarding affordable housing, put in by the Council.
- 21 Closing submissions on behalf of the Council.
- 22 Closing submissions on behalf of the appellant.
- 23 Application for costs on behalf of the appellant.