

IN THE MATTER OF A DEVELOPMENT AT CLAYS FARM, YAPTON

OPINION

1. I have been asked to provide an Opinion with regard to an outline application (Y/62/18/OUT) made by Genesis Town Planning on behalf of Domusea Developments Limited for a 33 dwelling residential development and associated works on land at Clays Farm, North End Road, Yapton ("the Site"). The application has been validated by the local planning authority, Arun District Council ("ADC"), but remains undetermined although it is due to be considered by ADC's planning committee in June 2019. I am instructed that there is support at officer level for the application due, in part to ADC's housing land supply, which as the central issue in relation to the application, but that officers have requested a supporting legal opinion from the applicant. Given the background to this matter, which I set out below, I consider such a request to be both understandable and reasonable.
2. Whilst for planning policy purposes, the Site is located in the open countryside, it lies adjacent to an area of land to the south which has been allocated in the Yapton Neighbourhood Plan ("Yapton NP") and has planning permission (Y/93/14/OUT) for 38 dwellings and also adjacent to land to the north at Street Buildings which has been granted outline planning permission (Y/49/17/OUT) for up to 45 dwellings in February 2018. In addition, land adjacent to the Yapton NP allocation known as Stakers Farm, North End Road has a resolution to grant outline planning permission (Y/44/17/OUT) for 70 dwellings subject to the completion of a section 106 agreement. Finally, land on the opposite side of North End Road and in close proximity to the Site was granted outline planning permission (Y/80/16/OUT) on appeal for up to 100 dwellings in an appeal decision letter dated 15 January 2018 ("the DL") following an inquiry on 14 December 2017. It is also relevant that the Site lies very close to the existing settlement policy boundary of Yapton and it is neither unreasonable nor an exaggeration to describe the proposal as a sustainable one. Further details and reasons in support of this can be found in the Planning, Access and Design Statement which I do not propose to repeat in this Opinion. However, I note that the Parish Council in its response dated 12 September 2018 does not object to the principle of the development of the Site but considers that it would be better promoted through a proposed revision of the Yapton NP. It is also clear from the Yapton NP and other documents, that Yapton is a focus for development.
3. The 2018 appeal decision was determined by a very experienced planning inspector and that decision is a highly material consideration of some weight in the determination of this application. In my opinion, the DL contains some very important points, particularly in relation to the background to that appeal, that

are germane to this application and to the issue of housing land supply in ADC's area. The DL makes specific reference to these issues at paragraphs 4 – 11 and at paragraphs 38, 40 and 41. In addition, the inspector made it clear that his decision was heavily influenced by the Secretary of State's decision on 13 October 2017, granting planning permission, in the appeal by Gleeson Developments Limited on land of Burndell Road, Yapton, West Sussex which is clearly another highly material consideration in the determination of this application. Given this background, and the holding letter from the Secretary of State of 1 April 2019, I can fully understand why ADC have requested a legal opinion on this issue.

4. In the Burndell Road appeal, the Secretary of State held that ADC's housing land supply was only 1.9 years – see paragraph 10 of the Secretary of State's letter where reference is also made to "the main parties agreement that there is a persistent undersupply of housing locally, that the 20% buffer should be applied, and that the assessed housing land supply is 1.9 years at maximum." In paragraph 11 he concludes that "the supply of housing is 1.9 years." This conclusion forms the starting point for the determination of ADC's housing land supply. As a result, the Secretary of State determined that any development plan conflict with policies GEN2 and GEN 3 and Yapton NP policies H1 and BB1 carried limited weight. These conclusions of the Secretary of State are not only material to ADC in the determination of this application but also in relation to the Secretary of State's consideration as indicated in the letter of 1 April 2019. It is clear that these played a significant part in the inspector's decision as set out in the DL.
5. The Yapton NP was "made" by ADC at its Full Council meeting on 5 November 2014. It is therefore well outside the two-year time period in paragraph 14a of NPPF3. The wording of paragraph 14 is clear and unequivocal and it only applies if all four criteria are met. As one is clearly not met, paragraph 14 can have no relevance to the determination of this application. It is also more than arguable that, based on the findings in the DL, that the criterion in paragraph 14c is also not met.
6. The Arun District Local Plan 2011-2031 ("the Local Plan") was adopted in July 2018. Chapter 12 deals with Housing Provision. Paragraph 12.1.5 contains an explanation of the strategy and notes the Planning Practice Guidance requirement for any shortfall to be met in the first five years of the plan period (the "Sedgefield" approach). Policy H SP1 sets out a district wide housing requirement of at least 20,000 dwellings for the plan period comprising a combination of identified strategic sites and smaller non-strategic sites that are intended to provide at least 1,250 dwellings. In his Local Plan Examination Inspector's Report the Inspector, Mark Dakeyne, noted that the figure for housing provision throughout the plan period should be seen as a minimum (i.e. a floor not a cap) in line with the Government's national objective of significantly boosting the supply of homes as set out in paragraph 59 of NPPF3.
7. Similarly, in his report, the inspector made the following comments at paragraphs 95 and 96:

95. The housing supply position and the 5 year supply should be based on the stepped delivery within Policy H SP1. It is accepted that persistent under-delivery has occurred so a 20% buffer should be moved forward from later in the Plan period. Because a 610 dpa requirement would be applied during the 2011-16 period there is limited undersupply from the early years of the LP but the shortfall should be dealt with by the Sedgefield method. In order to make the approach to calculating the 5 year supply clear to the decision maker, thus making the LP effective, an explanation should be included which would be achieved by MM22. Based on up to date figures and applying the stepped delivery, a 20% buffer and the Sedgefield method to making up the shortfall, **supply was 5.3 years at 31 March 2017.**
96. The HIS and the housing trajectory contained within the LP as Picture 12.1 (updated by MM23 to ensure an effective Plan) suggests that supply over the LP period will match the requirement but there will be peaks and troughs in delivery and potentially periods when a 5 year supply may not be achieved. However, actions are set out in the HIS to seek address any periods of shortfall. In the short-term the Council has agreed to invite planning applications on policy compliant HELAA sites and the first phases of some of the strategic allocations.
8. A number of important points flow from these two paragraphs in the Examination Inspector's Report:
- (a) It records, at paragraph 96, that ADC has agreed to invite planning applications on policy compliant HELAA sites. The HELAA Assessment Summary Table shows that the Site (NEWY23) as "deliverable". Indeed, it notes that the Site is considered to be a suitable site as there are no major constraints to overcome and that it is considered to be viable and achievable. The supporting text at paragraph 12.1.6 of the adopted Local Plan states that the housing supply for the Plan period includes "Deliverable" HELAA sites which are located in the Built Up Area Boundaries which are identified and deliverable through the HELAA. This category of site is expected to produce a minimum increase of 530 dwellings during the Plan period. For reasons set out below, I do not consider the fact that the Site is currently shown as in the open countryside affects the relevance of this point;
 - (b) In line with this, in an email exchange on 18 and 21 May 2018, the officers at ADC adopted a commendably pragmatic approach and accepted the merits of an application coming forward on the Site, given the self-evident changes that had occurred in the immediate locality with the number of permissions being approved (as set out in paragraph 2 above) on adjacent or nearby sites within Yapton. It is also relevant that Yapton is identified in policy H SP1 in the Local Plan as being a suitable location for at least 500 new homes during the plan period;
 - (c) In an update dated 20 February 2019, the ADC website currently states that, with regard to the ADC 5 year housing land supply, publication of the Authority Monitoring Report has been withheld until ADC is provided with the results of the Housing Delivery Test from government which were due to be published in November 2018, confirmation from the government on the Standard Housing Methodology following consultation in October 2018, and, confirmation from government on the definition of "deliverable" following

consultation in October 2018. Whilst the Housing Delivery Test Measurement Rule Book was published by government in July 2018, the accompanying 2018 Measurement Technical note was not published by government and made available until 19 February 2019;

- (d) The observation that the housing supply as at 31 March 2017 was 5.3 years needs to be set against the subsequent conclusion in the Secretary of State's decision letter of 13 October 2017 at paragraph 11 that the ADC has a housing land supply of 1.9 years and the DL of 15 January 2018 at paragraph 9 that there is a "serious shortfall" and, as stated in footnote 7 to the DL, "the shortfall is very significantly below the required five-year supply"; and
 - (e) A report commissioned on behalf of Domusea Strategic Ltd in February 2019 from Intelligent Land to examine ADC's Housing Land Supply position concluded at paragraph 2.2 that "the housing land supply calculation for each of the three five-year periods....shows that the Council in our view is not able to demonstrate a NPPF compliant housing land supply in any of the three years. Indeed the likelihood is that there is a significant gap between the Council's five year requirement and deliverable supply." It is important to note that Intelligent Land's assessment was informed by visits to key sites within ADC's land supply and secondary research into published information regarding the planning status of sites and had regard to the recent changes (February 2019) to the NPPF and NPPG.
9. It is against the above background that I am asked to provide an opinion on the planning merits of the application. As a general observation, it is clear to me from the circumstances recorded in the Secretary of State's decision letter of 13 October 2017, the inspector's DL of 15 January 2018 and the Local Plan Examination Inspector's Report (including his main modifications) that ADC has taken a realistic and pragmatic approach to addressing its housing supply shortfall, as evidenced by the agreement recorded by the Local Plan Examination Inspector with regard to policy compliant HELAA sites. Nevertheless, unless something remarkable has happened with regard to the housing land supply since the DL of 5 January 2018, the available evidence strongly suggests that ADC is unable currently to demonstrate a five-year housing land supply. The evidence from Intelligent Land indicates that there is "a significant gap between the Council's five year requirement and the deliverable supply". This is a key policy consideration because paragraph 11 of NPPF3 makes it clear that applications should be approved where the development proposal either accords with an up-to-date development plan or where "the policies which are most important for determining the application are out-of-date". In the latter case footnote 7 makes clear that policies are out of date include "for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites". Therefore the "tilted balance" applies.
10. It also appears to me clear that there are no substantive planning objections to the application. Therefore, the only planning objection to the application is a technical one based on a potential conflict with the settlement boundary policies in the Local Plan and the Yapton NP. On the assumption that there is a technical conflict (and as explained below it is my opinion that there may not be any

conflict), the determination of this application should follow the approach adopted by the Secretary of State in his decision letter of 13 October 2017 and the inspector in the DL i.e. that any conflict with these policies should carry “limited weight” (see paragraphs 12 and 13 of the Secretary of State’s decision letter) or paragraphs 4-11 of the DL. Furthermore, since those appeal decisions the NPPF has been revised (twice) and the relevant part of paragraph 11 modified and expanded so that it now reads “...or policies which are most important for determining the application are out-of-date..” (my emphasis) together with footnote 7 which ties this in to housing applications, so that an argument that the settlement boundary policies applicable to residential applications are out of date now has added strength in the light of this change in NPPF3. It is also material that three of the recently permitted developments in Yapton are located on land outside the Built-Up Area boundary in Yapton.

11. It follows that, in the light of all of the above, the planning merits of this application are very strong. I would go further, given the appeal decisions and permissions granted in the immediate vicinity, coupled with the housing land supply situation and the available supporting evidence, it would be extremely difficult for a decision maker to justify refusing permission. Furthermore, any refusal would be susceptible to legal challenge.
12. However, it can be argued that there is no conflict with the development plan. The Yapton NP pre-dates the Local Plan. Nevertheless, the wording of policies BB1 and H1 of the Yapton NP clearly recognise that these policies would have to adapt because, as policy H1 states, “the minimum housing requirement for Yapton over the period 2014 to 2029 will be established by the emerging Arun Local Plan.” The Local Plan has now been adopted and policies C SP1 and H SP1 effectively supersede the Yapton NP policies – see section 38(5) of the Planning and Compulsory Purchase Act 2004 which requires that, as a matter of law, any conflict between the Yapton NP and the Local Plan must be resolved in favour of the provisions of the Local Plan as it is the most recently adopted development plan document- in so far as there is any conflict between the two development plan documents. Furthermore, the wording of Yapton NP policy H1, acknowledges that it must give way to the requirements of the Local Plan: “The minimum housing requirement for Yapton over the period 2014 to 2029 will be established by the emerging Arun Local Plan”.
13. On this basis, it is the Local Plan that takes precedence and policy C SP1 states that “development will be permitted in the countryside where it is.....in accordance with other policies in the Plan which refer to a specific use or type of development.” The wording of policy H SP1 does not identify other specific policies and, in my opinion, it does not rule out the immediate development of the Site, as set out in the application, as there are strong grounds for arguing that the application accords with other policies in the Plan which refer to housing development and therefore, in my opinion, there is no conflict with the development plan on the basis that the Site is outside the Built Up Area boundary. This is, of course, a situation that did not arise in the previous appeals as they were determined before the Local Plan was adopted. On this basis, therefore, section 38(6) would require the application to be approved as it

accords with the development plan. Furthermore, paragraph 11c of NPPF3 would also apply. I should add that, having identified the Site as a blue “deliverable” HELAA site on the November 2017 interactive map, to determine that it cannot be developed now would be illogical and also contradict the supporting text to the Local Plan at paragraph 12.1.6. In my view, this factor alone reinforces my opinion that there is no conflict with the development plan otherwise it would render the Local Plan self-contradictory.

14. I have been asked to express an opinion on the reasonableness of ADC supporting the application. In my opinion, ADC’s officers have adopted a wholly pragmatic, reasonable and positive approach in expressing support for the application and have acted in accordance with paragraph 38 of NPPF3. I would also add, with due respect to the Parish Council, that it would not be open to ADC to refuse the application simply to wait for the preparation of a revision to the Yapton NP. That approach was rejected by the inspector (and others before him) in the DL at paragraphs 38- 43. It would also run counter to the advice on prematurity set out in paragraph 49 of NPPF3.
15. In short, in my opinion, the planning merits of the application are extremely strong. It is more than arguable that, on proper analysis, there is no development plan conflict in which case, as a matter of law, section 38(6) of the 2004 Act requires the application to be approved (in the absence of other substantive planning objections). Even if the view were taken that there is a technical conflict with the development plan, there are other highly material considerations in the form of the appeal and other planning application decisions that indicate that the application should be approved without delay. It must also be borne in mind that the courts have repeatedly stressed the desirability for consistency in decision-making with regard to planning applications – see *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P&CR 137. In the light of all of this, it is my opinion that the prospects of permission being granted, whether on appeal against a refusal or on a call-in, must be extremely high.

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