



# **PLANNING COMMITTEE REPORT**

**TO:** Planning Committee North

**BY:** Head of Development and Building Control

**DATE:** 1<sup>st</sup> March 2022

**DEVELOPMENT:** Outline application for the erection of up to 73 new dwellings (C3 use) and retention of existing farmhouse building, associated public open space, landscaping, drainage and highways infrastructure works, including vehicular access from Shipley Road with all matters reserved except access.

**SITE:** Woodfords, Shipley Road, Southwater, Horsham, West Sussex, RH13 9BQ

**WARD:** Southwater South and Shipley

**APPLICATION:** DC/20/2564

**APPLICANT:** **Name:** Reside Developments Ltd **Address:** The Dutch House, 132-134 High Street, Dorking, Surrey

**REASON FOR INCLUSION ON THE AGENDA:** By request of the Head of Development and Building Control

**RECOMMENDATION:** To amend the reasons for refusal being considered under the current appeal by the Planning Inspectorate. This would comprise withdrawing the reason for refusal on the principle of development and introducing a reason for refusal on water neutrality.

## **1. THE PURPOSE OF THIS REPORT**

1.1 To consider revisions to the reasons for refusal for application DC/20/2564, which is subject to a current appeal by the Planning Inspectorate. The recommendation is as follows:

- (a) To withdraw the current reason for refusal relating to the principle of development, owing to the Council's lack of five year housing land supply; and
- (b) To introduce a new reason for refusal relating to the adverse impact of the development on the Arun Valley SAC/SPA and Ramsar sites, as the development has not been demonstrated to be water neutral.

### **BACKGROUND:**

1.2 An outline application for planning permission for the development at Woodfords, Shipley Road, Southwater with 73 dwellings was submitted to the Council in December 2020 (ref: DC/20/2564). Following consideration of the proposals planning permission was refused under delegated powers on 29<sup>th</sup> April 2021 for the following reasons:

1. *The proposed development would be located in the countryside, outside of a defined built-up area boundary, and on a site that is not allocated for development within the Horsham*

*District Planning Framework, or a made Neighbourhood Plan. The Council is currently able to demonstrate a 5-year housing land supply, and consequently the proposed development would be contrary to the Council's overarching strategy for development. Furthermore, the proposed development is not essential to its countryside location. The proposed development is therefore contrary to Policies 1, 2, 4, 15 and 26 of the Horsham District Planning Framework (2015), and paragraphs 2, 11, 12, and 47 of the National Planning Policy Framework (2019).*

2. *The proposed development has not been accompanied by a completed s106 Legal Agreement, thereby does not secure the 35% of units required to be provided as affordable housing units. The proposal is therefore contrary to Policy 16 of the Horsham District Planning Framework (2015) as it has not been demonstrated how the affordable housing needs of the District would be met.*
- 1.3 The delegated officer report is attached at Appendix A, which includes the description of the site and the full details of the application along with all consultee comments and a discussion of all material considerations.
- 1.4 An appeal against the refusal of permission has now been submitted and is to be heard by way of written representations.
- 1.5 Since the refusal of planning permission, there have been material changes to the weight to be applied to the current development plan which necessitate the re-consideration of the principle of development. The Council can no longer demonstrate a five year supply of deliverable housing sites, and the Shipley Neighbourhood Plan has been made and now carries full weight in decision-making. Furthermore, the Natural England Position Statement of September 2021 raises an important new material planning consideration relating to water abstraction in the Arun Valley. In addition, the scheme has been amended to now include 4 self / custom build plots.
- 1.6 Since the submission of the appeal, a new application for 73 dwellings (ref: DC/21/2180) has also been submitted. This application is currently under consideration and is awaiting the submission of a water neutrality statement to address the issues raised by Natural England in their Position Statement. The proposed layout for the scheme is the same as the current appeal scheme.

## PLANNING HISTORY AND RELEVANT APPLICATIONS

DC/20/2564	Outline application for the erection of up to 73 new dwellings (C3 use) and retention of existing farmhouse building, associated public open space, landscaping, drainage and highways infrastructure works, including vehicular access from Shipley Road with all matters reserved except access.	Application Refused on 29.04.2021. Subject of an appeal.
DC/21/2180	Outline application for the erection of up to 73 new dwellings (C3 use) and retention of existing farmhouse building, associated public open space, landscaping, drainage and highway infrastructure works, including vehicular access from Shipley Road, with all matters reserved except for access	Under consideration.

### **3. OUTCOME OF CONSULTATIONS**

- 3.1 The full list of all consultations received as a result of the original application are outlined in the appended report, including 73 letters of objection from interested parties. These letters, along with all consultation responses, have been forwarded to the Planning Inspectorate as part of the consideration of the current appeal. Residents and all interested parties have also been notified of the current appeal with any further comments to be made directly to the Inspectorate.

### **4. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

- 4.1 Under the Equality Act 2010, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality, fostering good relations in respect of Race, Disability, Gender including gender reassignment, Age, Sexual Orientation, Pregnancy and maternity, Religion or belief. The Equality Act 2010 will form part of the planning assessment below.

### **5. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER**

- 5.1 It is not considered that the development would be likely to have any significant impact on crime and disorder.

### **6. PLANNING ASSESSMENTS**

- 6.1 As set out above, since the refusal of planning permission, new material considerations have arisen relating to:

1. Water neutrality, and the consequential impact of development on the integrity of the Arun Valley SAC/SPA and Ramsar site.
2. The introduction of 4 custom / self-build dwellings in the proposal;
3. The Shipley Neighbourhood Plan; and
4. The Council's five year housing land supply position

These new considerations are discussed below along with the officer's recommended re-balancing of the development against these new considerations and the development plan as a whole.

#### Water Neutrality

- 6.2 Horsham District is situated in an area of serious water stress, as identified by the Environment Agency. In September 2021, Natural England released a Position Statement which advised all local authorities within the Sussex North Water Supply Zone that it cannot be concluded that existing water abstraction within the Sussex North Water Supply Zone is not having an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar sites near Pulborough. The Position Statement advises the affected local authorities that developments within the Sussex North Supply Zone must not therefore add to this impact, and one way of achieving this is to demonstrate water neutrality. The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.
- 6.3 In assessing the impact of development on protected habitat sites such as those in the Arun Valley, decision makers must, as the competent authority for determining impact on such sites, ensure full compliance with the Conservation of Habitats and Species Regulations 2017 (known as the Habitat Regulations). The Regulations require that a Habitats Regulations Assessment (HRA) be carried out to determine if a plan or project may affect the protected features of a habitats site, before the grant of any planning permission. Section 70(3) of the Regulations requires that planning permission must not be granted unless the

competent authority (Horsham District Council) is satisfied that the proposed development will not adversely affect the integrity of the affected habits site. Section 63 of the Regulations sets out the process by which an HRA must take place.

- 6.4 The requirements of Section 70(3) are reflected in paragraph 180 of the NPPF, which states that *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'*.
- 6.5 The application site at Woodfords falls within the Sussex North Water Supply Zone which draws its water supply from groundwater abstraction at Hardham (near Pulborough), adjacent to the Arun Valley sites. The water abstraction issues raised by the Natural England Position Statement are therefore a new material planning consideration relevant to the appeal proposals. Given the requirements of the Habitat Regulations and paragraph 180 of the NPPF, adverse impact on the integrity of the Arun Valley sites must be given great weight in decision making.
- 6.6 In order to demonstrate that no adverse impact will occur at the Arun Valley sites, all new development within the supply zone must demonstrate water neutrality, i.e. that water consumption from the site when occupied will not increase water abstraction in the Arun Valley.
- 6.7 The appeal documents do not contain a Water Neutrality Statement, therefore it is not possible to conclude with sufficient certainty that the development of 73 dwellings at the Woodfords site would not result in adverse impact on the integrity of the Arun Valley habitat sites. On this basis the development does not comply with s.70 of the Conservation of Habitats and Species Act 2017 and is also contrary to Policy 31 of the HDPF and paragraph 180 of the NPPF.
- 6.8 The officer recommendation is therefore that the following refusal reason be added to the Council's Statement of Case for consideration by the appointed inspector:
1. Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

#### The introduction of four custom / self build plots to the development proposals

- 6.9 The scheme, as submitted under the appeal, has been amended to include 4 self / custom build units. This equates to just over 5% of the housing provision. As this proposal is for outline permission, the exact location and design of the units will be assessed under a reserved matters application. The draft legal agreement submitted with the appeal requires the provision of the units with an obligation for the units to be delivered. The exact wording of the agreement is to be agreed. The original refused application did not include the provision of custom / self build units, however the inclusion of the units is welcomed as a benefit of the development and will assist in helping meet this demand in the district. If the original refused scheme had included the custom / self build units, reason for refusal no.2 would have included a requirement for a legal agreement for the proposal to also make reference to these units to secure their provision. As such, a minor amendment is recommended to the wording reason for refusal no.2 to include reference to the custom / self build units:

1. *The proposed development has not been accompanied by a completed s106 Legal Agreement, thereby does not secure the 35% of units required to be provided as affordable housing units or include a requirement for the provision of 4 custom / self build units. The proposal is therefore contrary to Policy 16 of the Horsham District Planning Framework (2015) as it has not been demonstrated how the affordable housing needs of the District would be met.*

The appellants have submitted a draft legal agreement to include the provision of these four custom / self build plots, as discussed later in this report at paragraph 6.23

#### The Shipley Grinstead Neighbourhood Plan

- 6.10 Since the refusal of planning permission, the Shipley Neighbourhood Plan (SNP) has passed referendum and now forms part of the adopted development plan for Horsham District. At the time the application was refused the SNP had passed through examination and was given significant weight in the decision made. The SNP does not allocate sites to meet its identified housing need, instead relying on the wider district plan to address housing need. Consequently, the principle of housing on this site does not conflict with the SNP, and there is no identified conflict with any other policy in the SNP.

#### The Council's five year housing land supply position:

- 6.11 The application was refused planning permission at a time when the Council was able to demonstrate a five year supply of deliverable housing sites. Accordingly, the identified conflict with Strategic Policies 2, 4, and 26 of the HDPF was afforded full weight and the principle of development on this unallocated greenfield site was considered unacceptable.
- 6.12 Since this decision was made, recent appeal decisions at Rascals Farm, Southwater (DC/20/0695), Newhouse Farm, Horsham (DC/20/0470) and Sandy Lane, Henfield (DC/20/0427) have established that the Council is no longer able to demonstrate a five year housing land supply, with the supply calculated to be between 4.2 and 4.4 years. This is reflected in the Council's latest Authority Monitoring Report, which calculates the five year supply from 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2026 to now be 4.0 years.
- 6.13 The absence of a five year housing land supply is a significant new material consideration that in itself triggers the presumption in favour of sustainable development at paragraph 11d of the NPPF. Accordingly, the provision of 73 dwellings carries significant weight in decision making, and the weight to be applied to the identified conflict with Policies 2, 4 and 26 is diminished.

#### Revised Planning Balance:

- 6.14 In light of the Council's five year housing land supply position and the other new material planning considerations identified above, it is necessary to re-balance the benefits of the proposed development against the harm identified.
- 6.15 The proposals would provide for a number of benefits including 73 dwellings, a policy compliant 35% affordable housing and increased local spend. No harm was identified in respect of landscape impact, highways impacts, neighbouring amenity, air quality, trees, flood risk, heritage, and ecological impacts. The provision of 4 custom / self build plots would provide a small benefit in helping meet the demand for such plots on the council's custom /self build register.

- 6.16 The proposals however remain contrary to Strategic Policies 2, 4 and 26 of the HDPF, in that the site is located outside a defined settlement boundary, remains unallocated for housing development, and is not essential to be located in this countryside location.
- 6.17 However, as set out above, the weight to be applied to this conflict is now significantly reduced. This is because Paragraph 11d of the NPPF requires that those policies most important for determining applications (in this case Policies 2, 4 and 26) be deemed out-of-date in circumstances where a Council is unable to demonstrate a five year supply of deliverable housing sites (footnote 8). Paragraph 11d in such circumstances then requires that planning permission be granted, triggering the presumption in favour of sustainable development (also referred to as the 'tilted balance'), that is unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*
- 6.18 Footnote 7 to Paragraph 11d identifies that policies relating to habitat sites are those capable of forming a clear reason to refuse permission under part i) above. In respect of habitat sites, the NPPF at paragraph 180 states that *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'*. Paragraph 182 of the NPPF further states that *'the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.'* In this instance, the proposal has not demonstrated water neutrality and therefore would result in harm to the Arun Valley habitats sites. This constitutes a clear reason to refuse permission applying paragraphs 180 and 182 of the NPPF.
- 6.19 Whilst the harm to the Arun Valley habitat sites provides a clear reason to refuse permission that disengages the Paragraph 11d 'tilted balance', it is no longer considered reasonable to otherwise resist the principle of development on this site. As set out above, Policies 2, 4 and 26, and by extension the district's settlement boundaries, are to now be considered out of date given the Council's housing land supply position. The benefit of the housing must now attract very significant weight and outweigh the conflict with these out-of-date policies. As such, officer's advice is that the first refusal reason can no longer be supported.
- 6.20 In reaching this recommendation regard has been had to paragraph 14 of the NPPF which states that *'in situations where the presumption (at paragraph 11d) applies to application to involving the provision of housing, the adverse impact of allowing development that conflicts the neighbourhood plan is likely to significantly demonstrably outweigh the benefits.'* This safeguard is subject to several criteria, including the requirement that any qualifying neighbourhood plan must contain allocations to meet its identified housing need. In this instance, the recently made Shipley Neighbourhood Plan does not include allocations to meet its identified housing need, therefore the protections of paragraph 14 do not apply.
- 6.21 Regard has also been had to the Local Plan Review, with the draft Regulation 19 Plan provisionally published in July 2021 not including this site as a housing allocation. This Plan has not progressed to public consultation while the impacts on water abstraction in the Arun Valley on the Plan are further explored. The content of this draft Plan therefore carries no appreciable weight in decision making.

- 6.22 Accordingly, officers recommend that the Council should no longer defend the first reason for refusal relating to the principle of development. Instead, officers recommend that the Council defend the appeal in relation to the new material consideration concerning the impacts of the development on the Arun Valley habitat sites.
- 6.23 In respect of the second reason for refusal, which related to the absence of a s106 legal agreement to secure the affordable housing and upgrades to footpath 1840, a draft legal agreement has been submitted as part of the current appeal and is being considered by the Council's legal department. At this stage until the draft agreement is agreed the second reason for refusal will remain.

## **7. RECOMMENDATION**

7.1 That the Council advises the Planning Inspectorate that it will:

- (a) No longer be seeking to defend the reason for refusal no. 1 regarding the principle of development given the Council's five year housing land supply position; and
- (b) Will be defending the refusal of planning permission instead on the following grounds:
  - 1. Insufficient information has been provided to demonstrate with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 179 and 180 of the National Planning Policy Framework (2021), its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).
  - 2. The proposed development has not been accompanied by a completed s106 Legal Agreement, thereby does not secure the 35% of units required to be provided as affordable housing units or include a requirement for the provision of 4 custom / self build units. The proposal is therefore contrary to Policy 16 of the Horsham District Planning Framework (2015) as it has not been demonstrated how the affordable housing needs of the District would be met.