



Appeal Decision

Inquiry opened on 31 March 2009

**by Andrew M Phillipson BSc CEng FICE
MIHT**

**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

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

**Decision date:
8 May 2009**

Appeal Ref: APP/Z3825/A/08/2090104

Agates Yard, Faygate Lane, Faygate, Horsham RH12 4SJ

- 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 Helical (Faygate) Ltd against the decision of Horsham District Council.
- The application Ref DC/08/0316, dated 12 February 2008, was refused by notice dated 13 May 2008.
- The development proposed is the demolition of existing buildings, construction of 148 retirement units, eight affordable housing units, one warden's unit, 50 bed care home, visitor accommodation, central facilities building, shop, medical centre, provision of formal and informal open space, balancing pond, associated landscaping and improvements to the existing access.
- The inquiry sat for 5 days on 31 March to 7 April 2009.

Procedural Matters

1. The application was submitted in outline with all matters reserved.
2. The description of the development set out above differs from that proposed at the time of the application. The change concerns the number of retirement units. At the time of the application, 156 retirement units were proposed. However, following discussions, it was subsequently agreed with the Council that, if planning permission for the development should be granted on appeal, eight of the retirement units should be replaced with the same number of affordable homes. The amended description was advertised (LPA8) and, by letter dated 22 April (LPA10), the Council advised that no objections had been made to the proposed amendment.¹ Given this, I concluded that the appeal should fairly and reasonably be determined on the basis of the revised description.
3. The inquiry opened on 31 March. Having heard all the evidence and the interim closing submissions, it was adjourned on 7 April to allow time for responses to the consultation on the amended description of the development to be received and analysed. Following this (see above) a finalised S106 Unilateral Undertaking (APP23) was submitted on behalf of the Appellant Company under cover of Barton Willmore's letter dated 23 April. Having studied the various documents received, I was satisfied that no useful purpose

¹ Technically the amended description advertised related to a different application than that subject to the appeal. This application (Council Ref DC/08/2614) is, however, in all material respects identical to that subject to the appeal. Accordingly, it was agreed by all present at the inquiry that responses to the amended description for DC/08/2614 should be taken as a strong indicator of interested parties' reaction to an identical change in the appeal scheme.

would be served by resuming the inquiry. I therefore arranged for the inquiry to be closed in writing (INQ5).

Decision

4. I allow the appeal, and grant planning permission for the demolition of the existing buildings, construction of 148 retirement units, eight affordable housing units, one warden's unit, 50 bed care home, visitor accommodation, central facilities building, shop, medical centre, provision of formal and informal open space, balancing pond, associated landscaping and improvements to the existing access at Agates Yard, Faygate Lane, Faygate in accordance with the terms of the application, Ref DC/08/0316, dated 12 February 2008, and the plans submitted with it, subject to the conditions set out in Annex A.

Introduction and Main Issues

5. Whereas the Council refused planning permission for five reasons, it was agreed before the inquiry opened that the fourth reason for refusal, concerning the road safety implications of the access to the site, could be overcome by a condition requiring that the access be improved in accordance with a plan submitted to and agreed by the highway authority.
6. It was similarly agreed that the band of Hybrid Black Poplars on the site, which the fifth reason for refusal assumed would be lost, could in fact be retained (with the exception of one tree which would need to be felled in order to provide access to the proposed balancing pond and water treatment area). The Council therefore agreed that this reason for refusal would not be contested at the inquiry, provided that a condition was imposed on any permission granted requiring the retention of these trees.
7. As to the third reason for refusal, concerning the need for the development to make infrastructure contributions to mitigate its impact, it was agreed that this would be overcome by the S106 Unilateral Undertaking entered into by the Appellant Company. This provides, amongst other matters, for permissive footpaths and open space and an element of public art to be provided on the site, together with a village shop, a surgery/medical centre, and a library, each of which would be made available to the existing residents of Faygate as well as all residents of the development. It further secures the provision of a community bus service to serve the development and the wider community of Faygate and provides a total of £128,000 towards the off-site highway, footpath, cycleway and public transport infrastructure improvements.
8. On affordable housing it secures the provision of eight affordable housing units on site (including five social rented units) and the payment of a contribution of £3,260,000 towards the provision of affordable housing off-site.
9. As to the remaining reasons for refusal, it is common ground that the proposal to develop the site for housing conflicts with the development plan. The main issue thus amounts to whether or not this conflict, and any other harm arising from the development, would be outweighed by the various material considerations in favour of granting planning permission for the proposal.

Reasons

Conflict with the Development Plan

10. The development plan includes the *Regional Planning Guidance for the South East (RPG9)*, the saved policies of the *West Sussex Structure Plan 2001-2016*, adopted in October 2004, and the District Council's adopted development plan documents.
11. Of these, the District Council's development plan documents are the most recent. The *Core Strategy* was adopted in February 2007 and this was followed later in the same year by the *Site Specific Allocations of Land* and the *General Development Control Policies*. *RPG9* and the saved policies of the *Structure Plan*, whilst currently part of the development plan, are expected to soon be superseded when the *South East Plan* is finalised and published.
12. As to housing, policy LOC1 in the *Structure Plan* defines a hierarchy of where development should take place, starting with development within existing towns and villages, followed by major identified large scale extensions to towns which, in the context of the District, includes areas West of Horsham and West of Crawley (now West of Bewbush). In addition to this, the policy requires that "limited provision" should be made for the small-scale growth of villages within their built-up area boundaries and small-scale extensions to main towns in the growth corridors to meet identified local needs not otherwise met.
13. This general theme, which as I see it accords with the policy guidance in *PPS3*, is followed closely in the *Horsham District LDF* documents. The *Core Strategy* defines built-up area boundaries for each of the District's larger settlements and divides these settlements into two categories, based on their roles, how they function and their access to facilities such as employment, schools, a general shop, health facilities and a reasonable level of public transport. The strategy, laid down in policy CP5, is to concentrate growth in the larger, Category 1, settlements. In the Category 2 settlements, where services are more limited, the emphasis is to re-use suitable previously developed land for housing. Land outside the built-up area boundaries is regarded as being within the countryside for policy purposes and minor extensions to the built-up areas of Category 2 settlements are only permitted where required to meet an identified local need.
14. Faygate is a Category 2 Settlement and the appeal site is wholly outside its built-up area boundary (albeit that part of the site adjoins the boundary to the south). Its development for housing would thus be fundamentally at odds with the *Horsham LDF* and the presumption against unnecessary development in the countryside set down in policy LOC2 of the *Structure Plan*. Indeed, in their report on the *Site Specific Allocations of Land* DPD in September 2007, the Inspectors concluded that allocating any development site adjoining a Category 2 settlement as a housing site would make the DPD unsound.
15. An additional potential conflict with the development plan arises from the site's location within the strategic gap separating Horsham and Crawley. Policy CH3(a) of the *Structure Plan* aims to maintain the separate character and identity of settlements. This aim is reflected in policy DC3 of Horsham's *General Development Control Policies* DPD, which seeks to avoid development that would individually or cumulatively result in the actual or perceived

coalescence of settlements, through visual intrusion that reduces the break between settlements or by bringing about a significant increase in activity which has an urbanising effect of the area.

16. As to the actual conflict in this area, it seems to me that any increase in activity compared to the existing situation would, at the most, be only modest.² The site itself (which is far from "open" at present) is well screened from travellers passing along the critical A264 corridor. It is also screened in part from the railway by (i) the Faygate Business Park which stands between the station platforms and the development site and (ii) the band of Hybrid Black Poplars which lies between the railway and the area proposed for development. Notwithstanding this, passengers in passing trains would be clearly able to see the development on the western part of the site through the trees and, insofar as these passengers' views would be more "urban" than at present, I accept that there would be harm to the strategic gap.
17. I was struck, however, when I travelled on the railway that the gap between Horsham and Crawley is comparatively wide. From the train, Faygate is perceived as a small settlement in an otherwise largely open tract of countryside. The settlement's size and impact would be increased by the development proposed, but it would not, in my opinion, fundamentally alter the nature of the gap or lead to any perceived coalescence. I therefore take the view that the actual harm to the strategic gap between Horsham and Crawley would, as a matter of fact, be only very small.
18. A further potential conflict with the development plan results from the loss of the existing employment site which currently accommodates a timber business and various other uses. Such losses are resisted by policies NE5 of the *Structure Plan* and CP11 of the *Core Strategy* where the sites are important in maintaining the supply of premises and jobs in an area and minimising the development of greenfield sites.
19. As to the actual conflict, it is common ground that there is a substantial supply of Class B1, B2 and B8 employment sites in the area. The appeal site is atypical, however, insofar as there is a large area of open storage land beyond the buildings which is used mainly to store timber. The evidence is that, within Horsham District, another site that would provide equivalent facilities on the scale of the appeal site would be very hard, if not impossible, to find.
20. Notwithstanding this, there is evidence that the main company currently occupying the site (Homegrown Timber), also has an interest in another similar site in a neighbouring authority (the "Outwood" site) and, as I understand it, the sawmill which was formerly at Faygate has recently been transferred there. At the time of my visit, activity levels across the Faygate site appeared low and, whilst timber and other materials are scattered across the majority of the outdoor storage area, much of the material stored appeared not to have been moved for some considerable time. Whether the site is important to Homegrown Timber's business is uncertain; however, the evidence is that they

² Two way existing traffic flows into and out of the site during the peak hours, measured in May 2007, were 33vehs/hr (am) and 31vehs/hr (pm) (TA, Table 5). Predicted traffic flows for the completed development are 39vehs/hr (am) and 28vehs/hr (pm) (ibid, Table 10). Any differences are thus unlikely to be perceptible and would be insignificant compared to the background traffic flow on Faygate Lane (612 vechs/hr (am) and 555 vechs/hr (pm) - ibid, Table 6). Also, given the nature of the development proposed, it seems to me that perceived levels of on-site activity would be less than those associated with the current uses.

are in arrears with their rent and in late 2008 they were seeking to reduce the agreed rent. Their lease is due to expire at the end of 2009 (with no right of renewal), and they are reported as "*considering their options, including purchasing an alternative site which they have identified locally*". To my mind, and taking all matters raised into consideration, their continued occupation of the site is questionable, even if the appeal were to be dismissed.

21. Should Homegrown Timber vacate the site, there is no evidence to suggest that another similar user would emerge and wish to take it over. Also, given the number of employment sites in the area that are currently vacant, there is little prospect of the present run-down range of buildings being redeveloped. The various sub-tenant businesses that occupy parts of the premises are all small-scale and could, to my mind, be relatively easily accommodated elsewhere.
22. Given the above, I take the view that there is little or no justification to retain the premises in order to protect the District's stock of employment premises and/or to minimise the development of greenfield sites. I accordingly conclude that redevelopment of the site for the purposes proposed would not conflict with policies NE5 of the *Structure Plan* or CP11 of the *Core Strategy*.

Other Material Considerations

23. I turn now to consider the various matters advanced on behalf of the Appellant Company as material considerations that would justify granting planning permission for the proposal notwithstanding the conflict with the development plan. In summary, they principally concern matters relating to:
 - (a) the District's supply of housing sites;
 - (b) the area's need for continuing care retirement communities (CCRCs);
and
 - (c) the sustainability of the appeal proposals.
24. On the first of these matters, *PPS3* paragraph 71 states that where a local planning authority cannot demonstrate an up-to-date five year supply of deliverable housing sites they should consider favourably planning applications for housing having regard to the policies in the PPS.
25. As to the evidence on whether or not at this point in time Horsham can demonstrate a five year supply of deliverable sites, it is common ground that, as at 31 March 2008 (being the most recent date for which reliable statistics are available) the Council's *Annual Monitoring Report* showed the District as meeting the requirement set by the *Structure Plan*. It is further agreed that, measured against the increased requirement set by the emerging *South East Plan*, there would be a significant shortfall in the five year deliverable supply of sites. Beyond this, there were sharp differences of opinion between the Council's witness and the Appellant Company's witness dealing with the matter as to (i) the likelihood of several of the smaller sites in the Council's trajectory being developed within the next five years; (ii) the date at which dwellings are first likely to be delivered on the major West of Horsham allocation and the rate at which they would subsequently be completed; and (iii) whether or not an allowance for windfalls should be made in the calculations.

26. For my part, having considered the evidence presented by both sides, I tend towards the middle ground. What is clear, however, is that when the *South East Plan* is finalised and published, the housing requirement set by the *Structure Plan*, and used by the Council to draw up their *Core Strategy* and *Site Specific Allocations of Land* DPDs, and subsequently to monitor the forward supply of sites, will be overtaken. The DPDs will need to be reviewed and, given the size of the increased forward annual requirement that will almost certainly be set by the *South East Plan*, and the absence of reserve sites in Horsham's present DPDs, it seems inevitable that additional housing sites will need to be allocated for early release.
27. Notwithstanding this, *PPS3*, paragraph 71, makes it clear that the absence of an up-to-date five year supply of deliverable sites is only one of the considerations to be taken into account in deciding whether to grant planning permission for housing. Regard should be had to the other policies in the PPS, including the considerations listed in paragraph 69. These include, amongst other matters, "*the suitability of a site for housing, including its environmental sustainability.*" On this matter there is no doubt that the site has significant shortcomings. As previously noted, Faygate is a Category 2 settlement. It currently has very few facilities. There is no school nearby, and no shop. Employment opportunities in and near the settlement are limited, as is public transport serving it. As a location for general market housing, other locations in the District are plainly preferable from a sustainability viewpoint. I therefore take the view that the shortfall in Horsham's five year housing land supply should be afforded only limited weight in favour of granting planning permission for the appeal proposal.
28. Turning to the second matter, there is no dispute that, at the time the *Core Strategy* and the subsequent DPDs were drawn up, there was no study available considering the need for CCRCs in the area. That this is so is clear from the comments of the Inspector who examined the *General Development Control Policies*. In his report, paras 12.2 and 12.3, he recommends that policy DC36 should not encourage an "*exception*" for CCRCs in the countryside, noting that, if a need were to emerge, then sites could be assessed in the next review of the *Site Specific Allocations of Land* DPD. If the need were more urgent, he suggested that an application could be dealt with as an exception to the LDF policies.
29. As to need, the proposals were welcomed by the Head of Supported Housing at West Sussex County Council. A report prepared by the County estimates that there is currently a need for private sector Extra Care housing for 651 people in Horsham District, equivalent to 465 units. Over the next 20 years this is expected to increase as the number of older people increases. The expectation is that an increasing number of these people would want an independent lifestyle in a home they own.
30. In general terms the need was not disputed by the local planning authority, neither was it suggested that the model of provision proposed in the appeal scheme would not help to meet that need. Whilst the Council's witness suggested that the need might be met elsewhere in the District, the evidence is that (i) there are no planning policies that would specifically support such provision; and (ii) the masterplan for the West of Horsham development makes no specific provision for a CCRC or other similar development targeted at the

needs of the elderly. Whilst, plainly, a site of this size could accommodate Extra Care or similar specialist housing, and there is some evidence that one of the developers of the site (Berkeley Homes) is indeed considering providing such accommodation, there is no evidence that any firm proposals have so far been developed for the West of Horsham site. A recent letter from another of the developers involved in the site (Countryside Properties) moreover confirms specifically that the outline planning application that they expect to soon submit for the first 1,013 units on the site will not involve any specialist form of housing such as a CCRC.

31. Overall, having considered carefully the evidence presented on the matter, my view is that a CCRC or similar development is unlikely to be built elsewhere in the District, at least until such time as the *Core Strategy* and other DPDs are reviewed. Should the appeal fail, the consequences are that an acknowledged need in the area for specialist housing of the type proposed would probably not be filled for several years.
32. As to sustainability, there is no doubt that Faygate's sustainability credentials do not render it suitable as a location for general market housing (other than that required specifically to meet local needs). It is, as noted above, designated in the *Core Strategy* as a Category 2 settlement. It has no school, no shop and only limited opportunities for employment. Whilst it has a pub, garage, village hall and station, trains only serve the station on Mondays to Fridays and the services that stop at Faygate are infrequent outside the peak hours. Bus services passing through the settlement are limited to two each week. Whilst there is a good bus service linking Crawley and Horsham, which runs along the A264, the nearest stops are some 700m from the site.
33. The proposal is for a CCRC, however, and residency within the development (excluding the affordable homes) would be limited by the S106 Undertaking to (i) those over 65 (men) or over 60 (ladies) and their partners and (ii) persons over 55 who are in need of Extra Care. In practice, given the facilities that would be made available to residents (the costs of which would be included in the service charges they would pay), it is expected that the dwellings would be occupied almost exclusively by individuals with significant care needs, or couples where one or both have such needs.
34. As such, the development would, in terms of its trip generation, differ significantly from general market housing. Very few of the residents are likely to be employed and none of the units are likely to accommodate children of school age.³ The site's proximity to schools and employment opportunities is thus, for practical purposes, irrelevant.
35. The more active residents of the retirement units (but not the care home) would, of course, be likely to want to travel more widely, and some would use cars for trips to Horsham, Crawley and other destinations. The evidence is, however, that the number of private vehicular trips generated by CCRCs is significantly lower than those generated by general market housing. The proposal to provide a community bus as part of the development (which would be secured in perpetuity by the S106 Undertaking) should assist in reducing both the number of trips by private car made by residents of the development

³ Excluding, of course, residents of the eight affordable homes proposed.

to the local towns and by employees at the development travelling to and from work.

36. On travel, the site's proximity to the station is also a positive feature that, in my view, needs to be recognised. Whilst services stopping at Faygate are limited, they would nonetheless be likely to be attractive to some residents, not just for trips to the local towns but also for longer journeys. Many of these journeys would not be "time critical"; accordingly, the relatively infrequent services to and from Faygate would not constrain the train's use by residents of the CCRC to the extent that might otherwise be the case.
37. Further features of the development that should assist in reducing the needs for residents to travel include the proposals to provide a surgery/medical centre, a shop and a library on the site. These would be secured by the S106 Undertaking and should help to materially reduce the number of private car trips made by residents to destinations outside the development.
38. In common with the community bus, the shop, the library and the surgery/medical centre would be made available for all residents of Faygate to use. Their continued provision for the lifetime of the development would be secured by the S106 Undertaking. Accordingly, the development should assist in improving the existing settlement's sustainability insofar as the provision of local facilities should reduce the need to travel outside the settlement.

Conclusions

39. Bringing the above together, it is common ground that the proposal would conflict with a fundamental plank of the development plan insofar as it proposes housing on a site that is, in policy terms, in the countryside adjacent to a Category 2 settlement. I conclude also that the proposal would conflict with those development plan policies that seek to prevent development in the strategic gap between Horsham and Crawley, albeit that I find that the actual harm that the proposal would cause to the strategic gap would, as a matter of fact, be only very small.
40. As to the loss of the employment site, I conclude that there is little or no justification to retain it in order to protect the District's stock of employment premises and/or to minimise the development of greenfield sites. I accordingly conclude that redevelopment of the site for the purposes proposed would not conflict with policies NE5 of the *Structure Plan* or CP11 of the *Core Strategy*.
41. As to whether the other material justifications advanced in support of the application are such as to indicate a decision other than in accordance with the development plan, I conclude that, having regard to the site's location, the likely shortfall in the District's five year housing supply, as measured against the requirements of the emerging *South East Plan*, should be afforded only limited weight as a factor in favour of granting planning permission for the appeal proposal.
42. Notwithstanding this, I find (i) that there currently is a significant need for Extra Care or other similar housing for the elderly and infirm in the District and (ii) that, in the absence of the appeal scheme, this need is not likely to be met elsewhere in the District for several years. I further conclude that the scheme would not be unsustainable to the extent that would be the case were the site

to be redeveloped for normal market housing, given the nature of the proposed development and the various measures proposed to enhance its sustainability in the S106 Undertaking. These two matters are considerations which, to my mind, should attract significant weight in the overall planning balance.

43. As to other matters, the undertaking to make the community bus, the shop, the library, and the surgery/medical centre available for all residents of Faygate to use in perpetuity would make a modest contribution to improving the existing settlement's sustainability. The proposal would also secure eight units of affordable housing on site, and a significant financial contribution to be used to secure some 54 affordable housing units elsewhere in the District. Existing ground contamination on site would be remediated and the ecological value of the site should be improved with long term management. The public footpath through the site would be improved and further permissive paths and open space on the site provided for the public to use. The development would also provide employment for some 70 people. Each of these are matters which, to my mind, should be attributed some weight in the overall planning balance, alongside the clear support for the scheme from the Parish Council.
44. In overall terms the situation is one where, having taken all matters into account, I conclude that the material considerations in favour of granting planning permission for the appeal proposal are such as to indicate a decision otherwise than in accordance with the development plan. I have therefore allowed the appeal.

Conditions

45. In reaching this conclusion I have had regard to the S106 Undertaking entered into by the Appellant Company and to the need for conditions. The conditions that I have imposed follow those put forward at the inquiry by the parties (without prejudice). Conditions 4 and 5 are necessary to ensure that the detailed proposals for the development, when submitted, generally accord with illustrative proposals submitted with the application and include sufficient data to allow the planning authority to properly assess the scheme, in the interests of efficiency and the environment. Condition 6 operates to ensure that any contamination on the site is appropriately treated before development proceeds. Conditions 7 and 8 operate to (i) ensure improvements to the site access are promptly carried out in accordance with the scheme agreed with the highway authority; and (ii) to secure appropriate parking arrangements on the site. These are necessary in the interests of highway safety.
46. Conditions 9 and 10 are necessary to ensure that the construction phase is appropriately managed and that effective measures are taken to prevent the construction works damaging those trees on site which will be retained, in the interests of the environment. Condition 11 requires the dwellings to be designed and constructed in a manner that will limit their impact on the environment. Condition 12 requires any features of archaeological interest to be properly considered and, if necessary, investigated before development commences. Conditions 13 and 14 operate to ensure that (i) appropriate provision is made for the collection and treatment of foul and surface water from the development and (ii) the details of the design do not result in unnecessary harm to the ecology of Durants Brook as it flows through the site.

47. Condition 15 is necessary in the interests of the environment to ensure that the development has proper regard to any protected species found on the site and makes appropriate provision to secure and enhance other features of biodiversity interest. Condition 16 secures compliance with the travel plan submitted in support of the application. Condition 17 operates to ensure that no external lights on the site are put up without approval, in the interests of the environment.
48. The final condition, No 18, removes the permitted development rights that would normally be applied to dwellinghouses. This is necessary having regard to the intended layout and design of the development and to ensure that future residents' amenities are not harmed by any inappropriate additions or alterations to individual dwellings.

Andrew M Phillipson

Inspector

ANNEX A CONDITIONS

- 1) Approval of the details of the layout of the development, the scale of each building, the appearance of each building, access within the site and the landscaping of the development (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced. Development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 4) Plans and particulars of the reserved matters submitted pursuant to Condition 1) above shall conform to the "Table of Heights, Widths and Depths of Buildings"; the "Description of Built Development"; Drg 04 "Indicative Site Layout" and Drg 05 "Building Scale Parameter Plan" submitted as part of the application.
- 5) Plans and particulars of the reserved matters submitted pursuant to Condition 1) above shall include details of:
 - 1) the finished floor levels for each of the proposed buildings;
 - 2) all existing trees and hedges on the site which it is proposed to retain (which shall include the band of Hybrid Black Poplars shown on Plan L8 "Tree Removal to Accommodate Access Road") together with details of all

proposed arboricultural works to those trees and hedges and the timing for carrying out such work;

3) all proposed fences and other means of enclosure; and

4) all proposed external lighting.

- 6) Unless otherwise agreed in writing by the local planning authority, no development other than that required to be carried out as part of an approved scheme of remediation (and the formation of the access in accordance with Condition 7 below) shall take place until Conditions 6.1 to 6.4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the contamination to the extent specified in writing by the local planning authority until Condition 6.4 has been complied with.

6.1 An investigation and risk assessment must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments; and

(iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's "*Model Procedures for the Management of Land Contamination, CLR 11*".

6.2 A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

6.3 The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development (other than development required to carry out remediation) unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in *PPS23* as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

6.4 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Condition 6.1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 6.2, which is subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Condition 6.3.

6.5 A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the local planning authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's *"Model Procedures for the Management of Land Contamination, CLR 11"*.

- 7) No development other than the formation of the access to the proposed development from the public highway and works of remediation required by Condition 6 shall take place until that access has been constructed in accordance with the details shown on Figure 7 Rev A "Proposed Retirement Development - Preliminary Access Arrangement" prepared by Mouchel Parkman. Thereafter the visibility splays detailed on the Figure shall be kept free of any obstruction in excess of 0.6m above the level of the adjoining carriageway.
- 8) No development shall take place until plans showing (i) the layout and provision to be made for car parking, including spaces for the disabled (and access thereto); and (ii) the provision to be made for facilities for cycle parking have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved

details. Thereafter the car parking spaces and the facilities for cycle parking shall be retained and made available for their designated purpose at all times.

- 9) No development shall take place until a construction and environmental management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:
- 1) the security arrangements for the works site, including all temporary fences and hoardings;
 - 2) the arrangements to be made for the parking, loading and unloading of vehicles on the site and the storage of materials and equipment associated with the building works;
 - 3) the arrangements to be made to prevent vehicles leaving the site with soil, mud or other similar material adhering to their wheels or bodywork such as could cause a nuisance, hazard or visual intrusion to users of nearby public roads; and
 - 4) all temporary lighting installations, including mobile lighting units.

Development shall be carried out only in accordance with the approved construction and environmental management plan.

- 10) No development shall take place until details of the fencing and/or other measures proposed to protect the retained trees and hedges during construction (which shall generally accord with BS5837: Trees in Relation to Construction (2005)) have been submitted to and approved in writing by the local planning authority. Thereafter no machinery, materials or equipment shall be brought onto any area of the site for the purpose of the development (including equipment required for ground clearance works and demolition) until the approved fences and other measures for the protection of all retained trees and hedges in that area of the site have been completed. Once installed, the fences within each area of the site shall be maintained during the course of the development until all machinery and surplus materials have been removed from that area of the site. Areas so fenced off shall be treated as zones of prohibited access, and shall not be used for the storage of materials, equipment or machinery in any circumstances before, during or after the erection of the protective fencing. No mixing of cement, concrete, or the use of other materials or substances shall take place within any tree protection zone, or close enough to such a zone that seepage or displacement of those materials and substances could cause them to enter the zone.
- 11) No development shall take place until an initial design stage assessment by an accredited assessor for the Code for Sustainable Homes has been carried out and an interim certificate has been submitted to and approved in writing by the local planning authority stating that each dwelling has been designed to achieve a minimum of Level 3 of the Code (or an equivalent level of performance if an alternative independently assessed means of sustainability assessment is used). No dwelling shall be occupied until a final certificate stating that the dwelling complies with a minimum of Level 3 of the Code has been submitted to the local planning authority.
- 12) No development shall take place until the applicants, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation

which has been submitted to and approved in writing by the local planning authority.

- 13) No development shall take place until details of the provision to be made for the collection, treatment and disposal of foul and surface water arising from the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) No development shall take place until a scheme detailing the works proposed to Durants Brook and all land within a buffer zone measuring 8m from the top of the banks of the Brook has been submitted to and approved in writing by the local planning authority. Development within the buffer zone shall be carried out only as approved.
- 15) No development shall take place until (i) a scheme indicating how suitable provision will be made for protected species and their habitats and (ii) a scheme and programme of ecological mitigation and enhancement (which shall generally accord with the scheme set out in Bioscan Report E1459r2, Section 5) have been submitted to and approved in writing by the local planning authority. Development shall be carried out only in compliance with the approved schemes and programme.
- 16) No dwelling shall be first occupied until a travel plan (which shall generally accord with the Framework Travel Plan, Revision C, prepared by Mouchel Parkman and submitted in support of the application) has been submitted to and approved in writing by the local planning authority. Thereafter the provisions of the approved travel plan shall be complied with.
- 17) No external lighting other than that approved under Conditions 1, 5 and 9 above shall be erected on the site.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking re-enacting or modifying that Order) no development falling within Classes A, B, C, D, E, F, G, or H of Part 1 of Schedule 2 to the Order shall be erected, constructed or placed within the curtilages of any of the dwellings hereby permitted.

---end---

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Rhodri Price Lewis	Instructed by Ian Davison, Secretary and Solicitor to the Council
He called	
Paul Rowley BA(Hons) MRTPI	Head of Strategic and Community Planning, Horsham Borough Council
Ray Wright BA(Hons) DipTP MRTPI	Head of Development, Horsham Borough Council

FOR THE APPELLANT:

Morag Ellis	Instructed by Guy Flintoft, Barton Willmore
She called	
Matthew Chard BA(Hons) Dip (Hons) MAUD MLI	Director, Barton Willmore Landscape Planning and Design
Martin Paddle BSc CEng MICE FIHT	Divisional Director, Mouchel Ltd
Simon Ward BSc MRICS	Head of Research Consultancy, Vail Williams LLP
Guy Flintoft BA(Hons) DipTP DipUD MRTPI	Planning Director, Barton Willmore

INTERESTED PERSONS:

Margaret Dunsbee	Clerk to Colgate Parish Council
------------------	---------------------------------

DOCUMENTS

General Documents

INQ1	Core document list
INQ2	Statement of common ground - General
INQ3	Statement of common ground - Affordable Housing
INQ4	Inspector's draft conditions
INQ5	Planning Inspectorate's letters of 29 April 2009 notifying the parties that the inquiry is closed

Council's Documents

LPA1	Opening submissions
LPA2	Mr Rowley's proof of evidence and appendices
LPA3	Mr Rowley's summary
LPA4	Mr Rowley's supplementary proof
LPA5	E-mail from Homegrown Timber, put in by Mr Rowley
LPA6	Mr Wright's proof of evidence and appendices
LPA7	Aerial photograph of the site, marked to show existing uses, put in by Mr Wright
LPA8	Consultation letter, amending development description

LPA9 Closing submissions
LPA10 Letter of 22 April 2009 and enclosures

Appellant's Documents

APP1 Opening Statement
APP2 Mr Chard's proof of evidence
APP3 Mr Chard's appendices
APP4 Illustrative material accompanying Mr Chard's proof of evidence
APP5 Mr Paddle's proof of evidence
APP6 Mr Paddle's appendices
APP7 Mr Paddle's summary
APP8 Mr Ward's proof of evidence
APP9 Aerial photographs of sites referred to in Mr Ward's Appendix 5
APP10 Mr Flintoft's proof of evidence
APP11 Mr Flintoft's appendices
APP12 Bundle of letters from Countryside Properties, Crest Nicholson and Phillips and Freely Ltd
APP13 Appeal decision for Silent Garden, Liphook
APP14 Inspector's report and SoS's decision for land at Terriers Farm, High Wycombe
APP15 West Sussex CC consultation response to application DC/08/2614
APP16 Blythe Valley BC and others v SoS for Communities and Local Government [2008] EWCA Civ 861
APP17 Bernard Wheatcroft Ltd v SoS for the Environment
APP18 Aerial photographs and other details of the site at Green Lane, Outwood
APP19 Note on conditions proposed by the LPA
APP20 Draft S106 Unilateral Undertaking
APP21 Closing submissions
APP22 Comments on INQ4
APP23 Final S106 Unilateral Undertaking (Certified Copy)

Other Documents

CPC1 Mrs Dunsbee's statement