

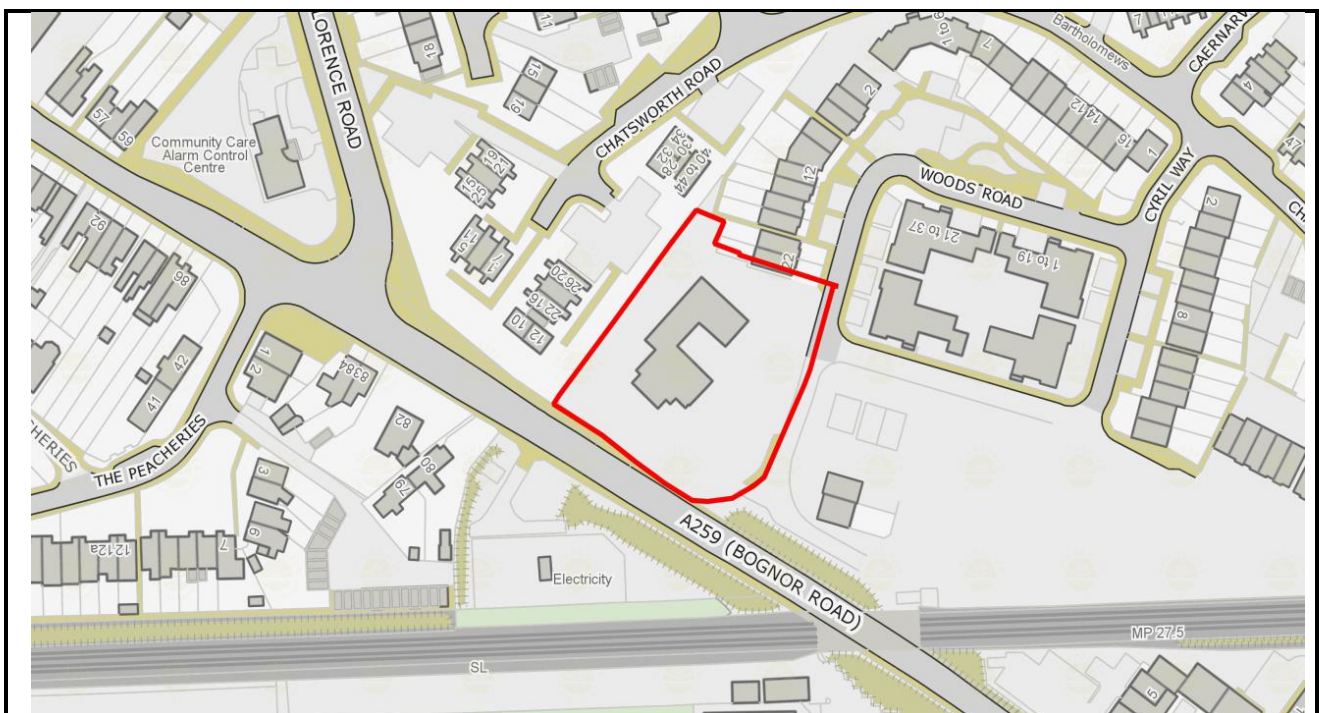
Parish:  
Chichester

Ward:  
Chichester East

### CC/21/00382/FUL

<b>Proposal</b>	Demolition of existing office building and redevelopment for 9 dwellings, including access, parking, landscaping, amenity space and associated infrastructure.		
<b>Site</b>	Bartholomews Holdings Bognor Road Chichester West Sussex PO19 7TT		
<b>Map Ref</b>	(E) 487490 (N) 104436		
<b>Applicant</b>	Bellway Homes Limited (Wessex)	<b>Agent</b>	Mr Brett Spiller

### RECOMMENDATION TO REFUSE



**NOT TO  
SCALE**

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## **1.0 Reason for Committee Referral**

- 1.1 Discretion of Divisional Manager Development Management – The application benefits from a resolution of the Planning Committee to defer for S106 and then permit from 15 June 2022. The applicant is now unable to enter into the S106 rendering the scheme unacceptable. The application is therefore now recommended for refusal and the new recommendation needs to be considered by the Planning Committee.
- 1.2 The S106 was required to secure the off-site nitrogen mitigation, together with a financial contribution towards the Bird Aware Scheme to address Recreational Disturbance. However, following the resolution, the applicant has been unable to secure the proposed nitrate mitigation scheme. In the absence of the necessary mitigation and a completed S106 agreement, the applicant has requested the application be determined in the knowledge it would be recommended for refusal.
- 1.3 This report details the original development, changes in circumstances since the committee resolution, changes to the planning policy context since the application was last considered and an updated assessment of the given the updated position. This report should be read in conjunction with the original report presented to the Planning Committee on 15 June 2022, which can be found at Appendix 1.

## **2.0 The Proposal**

- 2.1 The proposal seeks the demolition of the existing office building and the construction of nine dwellings (6 x 4-beds and 3 x 3-beds) with a single garage and associated works, to include the closing off of the vehicle access onto Bognor Road.
- 3.2 The proposal remains unchanged since the previous resolution of the Planning Committee.

## **3.0 Representations and Consultations**

- 3.1 There are no further representations.

## **7.0 Planning Policy**

### The Development Plan

- 7.1 The Development Plan for the area comprises the Chichester Local Plan: Key Policies 2014-2029, the CDC Site Allocation Development Plan Document and all made neighbourhood plans. There is no Neighbourhood Plan for Chichester.

7.2 The principal planning policies relevant to the consideration of this application are as follows:

Chichester Local Plan: Key Policies 2014-2029

- Policy 1: Presumption in Favour of Sustainable Development
- Policy 2: Development Strategy and Settlement Hierarchy
- Policy 4: Housing Provision
- Policy 5: Parish Housing Sites 2012- 2029
- Policy 6: Neighbourhood Development Plans
- Policy 8: Transport and Accessibility
- Policy 10 Chichester City Development Principles
- Policy 26 Existing Employment Sites
- Policy 33: New Residential Development
- Policy 39: Transport, Accessibility and Parking
- Policy 40: Sustainable Design and Construction
- Policy 42: Flood Risk and Water Management
- Policy 47: Heritage
- Policy 49: Biodiversity
- Policy 50: Development and Disturbance of Birds in Chichester and Langstone Harbours Special Protection Areas

National Policy and Guidance

- 7.3 Government planning policy now comprises the revised National Planning Policy Framework (NPPF 2023), which took effect from 19 December 2023. Paragraph 11 of the revised Framework states that plan and decisions should apply a presumption in favour of sustainable development, and for decision-taking this means:
- c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas of 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.
- 7.4 Consideration should also be given to the following paragraph and sections: Section 1 (introduction), 2 (Achieving Sustainable Development), Section 4 (Decision making), 5 (Delivering a sufficient Supply of Homes), Section 9 (Promoting sustainable transport), 12 (Achieving Well-Designed and Beautiful Places), 14 (Meeting the Challenge of Climate Change, Flooding, and Coastal Change) and 15 (Conserving and Enhancing the Natural Environments) of the NPPF. In addition, the relevant paragraphs of the National Planning Practice Guidance have also been considered.

## Chichester Local Plan 2021 - 2039: Proposed Submission (Regulation 19)

7.5 Work on the review of the adopted Local Plan to consider the development needs of the Chichester Plan Area through to 2039 is now well advanced. Consultation on a Preferred Approach Local Plan has taken place. Following detailed consideration of all responses to the consultation, the Council has published a Submission Local Plan under Regulation 19, which was approved by Cabinet and Full Council for consultation in January 2023. A period of consultation took place from 3rd February to 17th March 2023, and the Submission Local Plan is expected to be submitted to the Secretary of State for independent examination in early 2024. In accordance with the Local Development Scheme, it is anticipated that the new Plan will be adopted by the Council in 2024. At this stage, the Local Plan Review is an important material consideration in the determination of planning applications, the weight that can be attached to the policies contained therein is dependent on the significance of unresolved objection attributed to any relevant policy, commensurate with government policy at Paragraph 48 of the NPPF (2023).

7.6 Relevant policies from the published Chichester Local Plan 2021 - 2039: Proposed Submission (Regulation 19) are:

- Policy S1 Spatial Development Strategy
- Policy S2 Settlement Hierarchy
- Policy NE2 Natural Landscape
- Policy NE3 Landscape Gaps between settlements
- Policy NE5 Biodiversity and Biodiversity Net Gain
- Policy NE6 Chichester's Internationally and Nationally Designated Habitats
- Policy NE7 Development and Disturbance of Birds in Chichester and Langstone Harbours, Pagham Harbour, Solent and Dorset Coast Special Protection Areas and Medmerry Compensatory Habitat
- Policy NE8 Trees, Hedgerows and Woodlands
- Policy NE10 Development in the Countryside
- Policy NE15 Flood Risk and Water Management
- Policy NE16 Water Management and Water Quality
- Policy NE20 Pollution
- Policy NE21 Lighting
- Policy NE22 Air Quality
- Policy NE 23 Noise
- Policy H1 Meeting Housing Needs
- Policy H3 Non-strategic Parish Housing Requirements 2021-2039
- Policy H5 Housing Mix
- Policy H10 Accessible and Adaptable Homes
- Policy P1 Design Principles
- Policy P2 Local Character and Distinctiveness
- Policy P3 Density
- Policy P4 Layout and Access
- Policy P5 Spaces and Landscaping
- Policy P6 Amenity

- Policy P7 Materials and Detailing
- Policy T1: Transport Infrastructure
- Policy T2 Transport and Development
- Policy T3 Active Travel - Walking and Cycling Provision
- Policy T4 Parking Provision
- Policy I1 Infrastructure Provision

### Other Local Policy and Guidance

7.7 The following documents are material to the determination of this planning application:

- Planning Obligations and Affordable Housing SPD
- Surface Water and Foul Drainage SPD
- CDC Waste Storage and Collection Guidance

7.8 The aims and objectives of the Chichester in Partnership Community Strategy 2016-2029 which are relevant and material to the determination of this planning application are:

- Support communities to meet their own housing needs
- Support and promote initiatives that encourage alternative forms of transport and encourage the use of online services
- Promote and increase sustainable, environmentally friendly initiatives in the district
- Influence local policies in order to conserve and enhance the qualities and distinctiveness of our area

## **8.0 Planning Comments**

8.1 The main considerations include the key changes in circumstances since the committee resolution related to the matters details below:

- i. Principle of development
- ii. Infrastructure
- iii. Nutrient Neutrality
- iv. Recreational Disturbance

### Assessment

i. Principle of development

8.2 The application site is located within the Chichester settlement boundary, which is identified as the sub-regional Centre within the Chichester Local Plan (CLP) and is a location where the provision of a range of homes, workplaces and social and community facilities is supported by Policy 2 of the CLP, subject to compliance with other policies of the Development Plan.

8.3 The emerging Chichester Local Plan has gained weight, having reached regulation 19 consultation stage, since the application was last considered by the Planning Committee. This change in policy context however does not affect the principle of the development. The provision of new dwellings within Chichester remains acceptable in principle, subject to a number of other material considerations.

ii. Infrastructure

- 8.4 At the time the application was last considered by the Planning Committee, there was not requirement for new developments of less than 10 dwellings to provide a contribution towards the highway network. The emerging Chichester Local Plan Proposed Submission, however, requires all new housing in the southern part of the Plan Area to contribute to a scheme of infrastructure improvements to the strategic road network (A27). The LPR sets out a strategy to provide long term mitigation of these impacts, up to 2039, which requires all new housing development (net increase) to contribute towards identified improvements. In the absence of any such contribution the proposals would lead to an unsustainable increase in impacts upon these networks and would undermine the ability of the emerging LPR to deliver an appropriate mitigation strategy to see further growth of up to 3,600 dwellings beyond existing commitments.
- 8.5 The figure for the proposed dwellings would be £7728.00 x 9 (£69552.00), which would be secured through the S106 obligation together with the other requirements. However, in the absence of a completed obligation, the proposal would fail to comply with Policy 9 of the Chichester Local Plan 2014-2029, Policies I1, T1 and T2 of the emerging Chichester Local Plan Review 2021-2039: Proposed Submission and Paragraphs 8, 108, 109 and 114 of the National Planning Policy Framework.
- 8.6 In the absence of a S106 legal agreement to secure the contribution it is considered that the impact of the proposal upon the highway network would not be mitigated, contrary to the policies within the current Local Plan which seek to ensure that new development does not have an adverse impact upon the highway network and the emerging Local Plan, rendering the scheme unacceptable in this respect.

iii. Nutrient Neutrality

- 8.7 The proposal comprises new residential development, which is to be connected to the main sewer network, where it is accepted that the treated effluent from the development will eventually discharge into a European or internationally designated protected site, with the potential for harm to be caused to those sites by the overall increase in nitrate levels. It is Natural England's view that the cumulative increase in nitrate levels from development is likely to have a significant effect on such designated sites. This is therefore directly connected to the increase in wastewater from the development.
- 8.8 In such instances, the implications from the proposed development (that is the nutrient content of the discharge), together with the application of measures to avoid or reduce the likely harmful effects from the discharge, are required to be tested by the by the Local Planning Authority (LPA) via an Appropriate Assessment (AA) to assess the impact on the designated sites in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended).

- 8.9 To assist the LPA with its AA the application has been accompanied by a Nutrient Neutrality Statement, which details the additional nitrogen resulting from the proposed development (6.3 kg of Nitrogen per year) and a Nitrate Mitigation Proposal prepared by Henry Adams, which details the proposed offsite mitigation. The mitigation proposes the removal of 0.26ha of agricultural land at Chilgrove Farm, Chilgrove, Chichester, West Sussex. The mitigation has been tested via an AA, in consultation with Natural England, who raised no objection, subject to securing the proposed mitigation. However, it is no longer possible for the applicant to enter into a S106 to secure the nitrate mitigation scheme.
- 8.10 A strategic nitrate mitigation scheme at Chilgrove Farm is under development. However, additional information is required to progress the overarching agreement further, which would require further consultation with Natural England and consideration by the Council's Planning Committee (as to whether the to enter into the overarching agreement). Therefore, it may be sometime before this scheme is established.
- 8.11 As such, it is currently not possible to secure the necessary nitrogen mitigation required to mitigate the identified level of additional nitrogen which would result from the development. In the absence of adequate mitigation, the proposal would have a likely significant effect on the Chichester & Langstone Harbour Special Protection Area (SPA), Chichester Harbour Site of Special Scientific Interest (SSSI), Chichester & Langstone Harbours Ramsar site and Solent Maritime Special Area of Conservation (SAC). In accordance with the Paragraph 186 of the NPPF, where a proposal would have a significant impact upon biodiversity which cannot be avoided, adequately mitigated or compensated then planning permission should be refused. Consequently, in the absence of securing adequate mitigation, the proposal would be contrary to Policy 49 of the Local Plan and Paragraph 186 of the NPPF.

iv. Recreational Disturbance

- 8.12 The site is located within the 5.6km buffer zone of the Chichester and Langstone Harbours Special Protection Area where a net increase in dwellings would likely cause harm to the special qualities of the European designated site as a result of recreational disturbance. In accordance with Policy 50 of the Local Plan a financial contribution towards the Bird Aware Solent scheme is required in order to mitigate recreational disturbance as a result of the proposal. In the absence of S106 obligation, securing the requisite contribution, the proposal fails to comply with 50 of the Local Plan and the requirements of the Habitat and Protected Species Regulations 2017.

Conclusion

- 8.13 In considering the above, in the absence of a completed S106 obligation securing the requisite nitrogen mitigation and financial contribution towards infrastructure improvements and the Bird Aware Solent for Recreational Disturbance, the proposal would be contrary to Policy 9 and 50 of the Chichester Local Plan 2014-2029, Policies I1, T1 and T2 of the emerging Chichester Local Plan Review 2021-2039: Proposed Submission and Paragraphs 8, 108, 109, 114 and 186 of the National Planning Policy Framework. The harm identified from the development would not outweigh the benefits from the delivery of housing and therefore the application is recommended for refusal.

## Human Rights

8.14 In reaching this conclusion the Human Rights of the applicants and nearby occupiers have been taken into account and it is concluded that the recommendation to permit is justified and proportionate.

### **RECOMMENDATION**

REFUSE for the following reasons

1) The proposal would result in a net increase in overnight residential development, within a location where treated effluent will eventually discharge into the Chichester & Langstone Harbour Special Protection Area (SPA), Chichester Harbour Site of Special Scientific Interest (SSSI), Chichester & Langstone Harbours Ramsar site and Solent Maritime Special Area of Conservation (SAC). In the absence of adequate nitrogen mitigation, to offset the increase in treated effluent entering the harbour, the proposal would have a likely significant effect on these European sites, contrary to Policy 49 of the Local Plan and Paragraph 186 of the NPPF.

2) The site is located within the 5.6km 'zone of influence' of the Chichester and Langstone Harbours Special Protection Area where it has been identified that the net increase in residential development results in significant harm to those areas of nature conservation due to increased recreational disturbance. Sufficient mitigation against such an impact has not been made and, therefore, the proposal is contrary to Policy 50 of the Chichester Local Plan Key Policies 2014-2029. The development would therefore contravene the Conservation of Habitats and Species Regulations 2017 and the advice in the National Planning Policy Framework

3) On the basis of the information provided, the proposals, in combination with other development, would further impact upon the Strategic Road Network (SRN). This cumulative effect would likely have an unacceptable impact on the safety and function of both the SRN and the Local Highway Network (LHN). The Chichester Local Plan Review (LPR) sets out a strategy to provide long term mitigation of these impacts, up to 2039, which requires all new housing development (net increase) to contribute towards identified improvements. In the absence of any such contribution the proposals would lead to an unsustainable increase in impacts upon these networks and would undermine the ability of the emerging LPR to deliver an appropriate mitigation strategy to see further growth of up to 3,600 dwellings beyond existing commitments. The proposal is therefore contrary to Policy 9 of the Chichester Local Plan 2014-2029, Policies I1, T1 and T2 of the emerging Chichester Local Plan Review 2021-2039: Proposed Submission and Paragraphs 8, 108, 109 and 114 of the National Planning Policy Framework.



## INFORMATIVES

1) The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, it has not been possible to resolve them. The Local Planning Authority is willing to provide pre-application advice in respect of any future application for a revised development.

2) This decision relates to the following plans: 19097-O4C, 19097-O8C, 2027-TF-00-00-DR-L-1001, 2027-TF-00-00-DR-L-5001, 2027-TF-00-00-DR-L-5002, 19097-05, 19097-06, 19097-07, DWG 001 and DWG 002 REV 01

For further information on this application please contact Calum Thomas on 01243 534734

To view the application use the following link - <https://publicaccess.chichester.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=QO7YO1ERLTT00>