

Chichester District Council

Planning Committee

6 March 2024

Four Acre Nursery, Cooks Lane, Southbourne (LPA ref. SB/22/01903/OUT)

Outline planning application (with all matters reserved except access) for the development of 40 residential dwellings (Use Class C3), with associated vehicular access, parking and open space.

1. Contacts

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2. Recommendation

2.1 The Committee is asked to note the contents of this report and endorse the resolution of the 6 December 2023 Planning Committee to defer the application for S106 and then permit subject to:

i. conditions as set out in Appendix 1.

ii. Replacement hedgerow condition

No development shall commence on site, unless and until details of new hedgerow planting and hedgerow strengthening, to mitigate the loss of hedgerow at the site access, has been submitted to and approved in writing by the Local Planning Authority. The details shall include a planting plan and schedule of plants noting species, plant sizes and proposed numbers/densities, and shall include a program/timetable for the provision of the landscaping, including watering and maintenance arrangements. The works shall be carried out in accordance with the approved details and planting timetable and in accordance with the recommendations of the appropriate British Standards or other recognised codes of good practice. Any plants which are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise first agreed in writing by the Local Planning Authority.

Reason: In the interests of conserving and enhancing biodiversity.

iii. Expansion of the Green Ring condition

In conjunction with the first Reserved Matters application, details and plans demonstrating an increase to the open space area adjacent to the

northerns and western boundaries within the application site to strengthen the provision of the 'Green Ring' (over and above that indicated on the sketch site layout drawing number 3132/C/10005/SK rev 5) and including how the Green Ring will relate to the adjacent approved housing scheme to the north and west, shall be submitted to and agreed, in writing, by the Local Planning Authority.

Reason: in the interests of ecological connectivity, outdoor recreation and encouraging sustainable movement through the Parish.

iv. Biodiversity Net Gain Assessment condition

In conjunction with the first Reserved Matters application, a Biodiversity Net Gain Assessment Report, setting out how the development will result in a minimum Biodiversity Net Gain of 10%, measured against the Statutory Biodiversity Metric, together with a timetable for delivery and verification measures, shall be submitted to and agreed, in writing, by the Local Planning Authority.

Reason: To ensure that the development results in an appropriate biodiversity enhancement.

3.0 Background

- 3.1 On 6 December 2023 the Planning Committee resolved to permit the above proposed development subject to conditions, as set out in the report at Appendix 1 together with two new conditions as follows:
- A condition to secure hedgerow planting which would replace and strengthen the hedgerow that would be removed to create the access to the site, and
 - A condition seeking an increase in the Green Ring.
- and the completion of a S.106 agreement to secure the necessary infrastructure and to make the application acceptable in planning terms.
- 3.2 Prior to concluding the S.106 agreement, the government issued on 20 December 2023 a long anticipated revision to the National Planning Policy Framework (NPPF). The revised NPPF is relevant to the Four Acre Nursery application in that it introduces a change to the way in which the 5 year housing land supply (5YHLS) is undertaken. The Committee will recall that the Council's 5YHLS position was a fundamental consideration in the judgments made in the December Committee report regarding the appropriateness of the development. The government's changed policy stance on the 5YHLS issue is material to the decision making process on planning applications for new housing development.
- 3.3 Whilst the Four Acre Nursery application has a Committee resolution to permit, a decision has not yet been issued on the application pending completion of the S.106 agreement. Given that the application is not yet determined, officers consider that it is necessary to revisit the Committee resolution made 3 months ago in light of the change in government policy through the NPPF on housing land requirements.

- 3.4 In addition, since the December resolution the Council has issued its Decision statement for the Southbourne Modified Neighbourhood Plan (referendum modified plan) 2014-2029 at the start of January and it subsequently went to a referendum on 25 January, which it passed. A recommendation to therefore 'make' the Neighbourhood Plan is being considered at the 27 February Full Council meeting and, subject to approval, will thereafter be a fully adopted part of the Development Plan. Policy SB14 'Biodiversity' of the Southbourne Modified Neighbourhood Plan will, if the Neighbourhood Plan is made at Full Council, have full weight in consideration of the Four Acre Nursery application at the 6 March committee.

4.0 Main Report

- 4.1 The following text shall be read in conjunction with the officers' report to the December Committee which is attached at Appendix 1.

Housing Land Supply

- 4.2 At the time the Committee made its resolution in December 2023, the Council could not demonstrate that it had a 5YHLS as required by the NPPF. The absence of a 5YHLS triggered the 'tilted balance' in paragraph 11 d) of the NPPF. For decision-making this mechanism essentially provides for a presumption in favour of approving sustainable development proposals where the policies which are most important for determining the application are found to be out of date and the Local Authority cannot demonstrate a 5-year housing supply. Both circumstances applied in the case of Four Acre Nursery and whilst the Committee report acknowledged that the proposal was not contiguous with the settlement boundary (although arguably a technical breach only as the site adjoins the boundary of an approved development which is under construction) and would have very minor negative impacts on landscape character, when carrying out the final planning balance this was considered to be outweighed by the shortfall in the housing supply and acknowledgement of the weight which government policy attaches to significantly boosting the supply of homes.
- 4.3 With the issue of a revised NPPF, Councils like Chichester that have an emerging Local Plan which has completed its 'Regulation 19' formal consultation stage and is ready to submit for examination, need only identify a four-year supply of housing sites for the 5-year period. Through national planning guidance in the NPPG (Paragraph 055) the government has removed some initial ambiguity in interpretation of the NPPF advice by confirming that the five-year housing land supply and the four-year housing land supply that authorities should demonstrate for decision making purposes should consist of deliverable housing sites measured against the authority's five year housing land supply requirement (not a 4 years supply measured against a 4 year requirement as some have argued).
- 4.4 The Council has recently re-issued its Updated Position Statement on its 5YHLS housing supply (as at 1 April 2023). The current assessment for the Chichester Local Plan area identifies a potential housing supply of 2,661 net dwellings over the period 2023-2028. This compares with an identified housing requirement, over 4 years of 2,542 net dwellings. This results in a surplus of 121 net dwellings, equivalent to 4.19 years of housing supply.

- 4.5 The Council therefore clearly accepts that it cannot demonstrate a 5YHLS and indeed that position has changed further since December 2023 when the agreed supply was 4.65 years. What paragraph 226 of the NPPF now permits is for LPA's like Chichester which have a demonstrable housing supply of between 4 and 4.99 years, to deliver only a minimum of 4 years' worth of housing instead of a 5YHLS.
- 4.6 However, the important caveat to the new policy in NPPF paragraph 226 is that the new arrangement on housing supply is only a temporary arrangement which will apply for just a 2-year period from the date of publication of the NPPF. By the 6 March Committee therefore, the Council will already be 2.5 months into that temporary 2-year period which ends on 20 December 2025.
- 4.7 In addition to the government clarifying through the NPPG that the period over which a 4-year supply needs to be demonstrated is 5 years, there is a further implication in paragraph 11d) in terms of the weight to be attached in decision-making to the most important policies for determining the application. Under the new NPPF, the relevant housing policies in the Local Plan (2, 5 and 45) which were previously considered out-of-date when measured against a requirement to demonstrate a 5YHLS, are no longer out-of-date when measured against the requirement for a 4YHLS which the Council is able to demonstrate. By virtue of housing policies which are temporarily not out-of-date and a 4YHLS, officers maintain that the tilted balance is not engaged and the Council is able to determine the application on the basis of a flat balance.
- 4.8 At the recent Land off Main Road, Birdham appeal for 150 homes (21/01830/OUT, APP/L3815/W/23/3319434), the Inspector in reaching her decision on 9 February 2024 was required to assess the proposals in light of the revised NPPF and the changed position regarding the 5YHLS. The Inspector took the view that as a result of the transitional arrangements, the new position on housing supply did not apply because the application was submitted before 19 December 2023 and therefore the original 5YHLS requirements applied (as opposed to the revised 4 year supply). The Council could not demonstrate a housing supply against a 5 year requirement, the most important Local Plan policies 2, 5 and 45 were out of date and in her judgment therefore the tilted balance still applied. However, in her concluding remarks the Inspector opined that irrespective of whether the transitional arrangement applied, i.e. whether the application should be assessed on the basis of a tilted balance or whether it should be against an 'untitled' flat balance under S.38(6) of the Planning and Compulsory Purchase Act 2004, the conflicts identified with the development plan as a whole, were significantly and demonstrably outweighed by the identified benefits, principally the delivery of new housing.
- 4.9 The context at Birdham whilst not the same as Four Acre Nursery has some direct parallels. For example, both cases are for major housing developments on or very close to the edge of settlement boundaries and both were submitted prior to the issue of the revised NPPF. Adopting a similar stance to the final remarks of the Main Road Inspector, officers are of the opinion that whether Four Acre Nursery is assessed under the flat balance which officers consider to be the correct approach (notwithstanding the timing point of the transitional arrangements) or under the tilted balance, this should not alter the Committee's resolution on the application. The Council's housing land supply is greater than 4 years, but not by a significant margin and is likely to be challenged at appeal. Officers consider that the

government's revised position in NPPF para 226 and at 11 d) footnote 8 offers but a temporary hiatus for the Council and that to simply pull up the drawbridge at this point and stop permitting new housing applications during this 2 year period is not a tenable approach, particularly in respect of schemes that benefited from a resolution to grant planning permission.

- 4.10 For the reasons set out in the December Committee report attached at Appendix 1, Four Acre Nursery is considered an acceptable site for the housing development proposed scoring well against the majority of criteria in the Council's Interim Position Statement (IPS), which remains a helpful tool in considering the merits of a proposal, and with no technical objections such as cannot be addressed by the recommended conditions. To take a contrary view and refuse the application at this very late stage when the legal agreement is at an advanced stage of preparation would result in an appeal. With a 4.19 years housing supply and a recent history of speculative major housing appeals ebeing upheld by Inspectors primarily on the basis that they will provide more housing in sustainable locations, the Committee is strongly advised to re-affirm its previous position and permit the development.

Biodiversity Net Gain

- 4.11 Whilst the Four Acre Nursery application was submitted ahead of the national legislative requirement for 10% Biodiversity Net Gain (BNG), which became mandatory for major planning applications received from 12 February 2024, Policy SB14 in the Southbourne Neighbourhood Plan requires 'at least a 10% net gain in biodiversity'.
- 4.12 On the basis of the changed status of policy SB14, the applicant has agreed to meet the 10% BNG requirement (on or off site). A new condition is therefore recommended requiring the applicant to submit a BNG Assessment Report at reserved matters stage, setting out how the proposal would provide a minimum 10% biodiversity net gain using the current DEFRA 4.1 metric. On this basis the application is acceptable in accordance with Policy SB14 of the Southbourne Modified Neighbourhood Plan.

Background Papers

The application, and all submitted documents, can be viewed online at:

<https://publicaccess.chichester.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Appendix 1: Officers report to Planning Committee 6 December 2023.