

PLANNING STATEMENT

Site:

Rear of Prospect Farm, Main Road, Cutmill

Outline Planning Application Proposal:
Erection of 1no 2bed dwelling



Client:

Mrs L Marx

Agent:

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Table of Contents

EXECUTIVE SUMMARY	1
1 THE APPLICATION SITE AND ITS SURROUNDINGS	2
2 PLANNING POLICY	3
3 PRECEDENTS	7
4 CONCLUSIONS	10

EXECUTIVE SUMMARY

The proposal involves housing development in the rural area and therefore the starting point is to consider the Court of Appeal judgement on 28th March 2018 **[2018] EWCA Civ 610** in respect of *Braintree District Council v Secretary of State for Communities and Local Government; Greyread Ltd; and, Granville Developments*.

In the light of the Court of Appeal judgement and taking into the specific development adjacent to the application site it is concluded that the site is not 'isolated'. A prescriptive and restrictive interpretation is inappropriate and a more 'broad brush' approach is required when considering the application of this policy. It is clear that a settlement for the purposes of paragraph 80 [NPPF v4, July 2021] can include a cluster of dwellings and they can be without services and away from public transport.

In this particular case the application is within a clearly defined enclave of housing development which runs from just before Drift Lane and then extends along the A259 to Prospect Farm, beyond which it ends and changes to open countryside. This area, known as Cutmill, comprises a well-established village with its own identity. Even though Lindblom LJ made clear that a settlement for the purposes of paragraph 80 does not have to have its own shop or post office. That said, this area of housing forming Cutmill has the village hall, a primary school and a public house.

Moreover, Lindblom LJ also made clear, in its particular context in paragraph 55 of the NPPF, now paragraph 80, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. The proposed dwelling would clearly NOT be physically separate or remote from a settlement.

The most important local plan policy [Policy 45] provides a blanket essential need test for all countryside development. Accordingly, it is either out of date or not relevant. The absence of a 7yr HLS means that it is out of date.

Importantly, the Chidham and Hambrook Neighbourhood Plan Policy LP1 allows new housing development in the countryside on "windfall" sites which are identified as sites ten or less units on previously developed land. The NP was adopted more recently than the LP and therefore carries more weight, particularly if there is conflict between the two. Accordingly, NP policy LP1 supersedes LP policy 45.

In accordance with the Framework definition, the garden to Prospect Farm comprises PDL. Therefore, NP policy LP1 applies.

In a recent permission for a frontage plot at Orchard Farm, Drift Lane, Chidham [20/00164/OUT refers] the Council took the view that compliance, insofar as is possible, with LP Policy 45 is still required in terms of meeting an identified local need. In this regard the recent Parish Housing Needs Assessment has identified a need for 2 and 3 bedroomed dwellings. The application is SOLELY for a 2 bedroomed dwelling which will meet this identified need and therefore will meet a local need in compliance with LP Policy 45.

The site is located in a sustainable location being a very short walk to the

frequent 700 Coastline bus service along the A259 as well as being close to the primary school, public house and village hall – all being within a range of 140 to 300m. Nutbourne railway station is 1.2m away. Moreover the recent appeal decision at Flatt Farm which granted 68 dwellings on the west side of Drift Lane is indicative of the fact that this area will be considered as a built up area in the future.

There are no significant adverse impacts. The housing would fit within the context of development on the north side of Main Road. Although in outline form, with all matters, except access, reserved, the dwelling would likely to be in the style of a converted barn building, being single storey with bedrooms within the roofspace. either single storey or chalet bungalows. It will therefore echo the scale of Orchard Farm to the west [front] and other neighbourign dwellings. Accordingly, the development will fit in within the built form character along the lane.

Therefore, the presumption in favour of sustainable development applies in this case and planning permission should be granted.

1 THE APPLICATION SITE AND ITS SURROUNDINGS

- 1.1 The application site is located on the north side of Drift Lane, just to the north of the A259. It forms part of a clear continuous built-up frontage which runs from the west side of Drift Lane to the application site. The application site forms part fo the rear garden to Prospect Farm.
- 1.2 The site and commercial building on it are not of listed status, nor is it within a national park or area of Outstanding Natural Beauty or conservation area, although the Chichester Harbour AONB lies on the south side of the A259. The site is unlikely to be seen from the AONB due to vegetation but it is possible that a small glimpse may be possible from the south east.
- 1.3 The site is generally level and laid to grass. Access will be from the existing drive to the house and then along the western boundary.
- 1.4 There is no record of flooding on the site and the site is not in a flood risk area.
- 1.5 To the north of the site are a number of paddocks enclosed by native hedgerows, one of which forms the northern boundary to the site.
- 1.6 The application is in outline form with all matters reserved, except access. An illustrative siting is shown, as is the location for the drive, which utilises the existing southern access to Prospect Farm.
- 1.7 To the west of the site there is the garden to Prospect Barn, which is occupied by the applicants 92 year old father. It is intended that some of the land to that property will be replaced with planting required for nitrate mitigation.

2 PLANNING POLICY

Local Plan: Key Policies 2014–2029.

- 2.1 Policy 45 refers to development in the countryside setting out that within the countryside, development will be granted where it requires a countryside location and meets the essential small scale and local need which cannot be met within or immediately adjacent to existing settlements.
- 2.2 I contend that the weight that can be attached to policy 45 must be judged against paragraph of the Framework in respect of the definition of 'isolated'. Accordingly, if the site is judged to be 'isolated' within the Framework meaning then Policy 45 carries substantial weight and an essential need must be demonstrated. Conversely, if the site is not found to be 'isolated' then Policy 45 can carry little, if any weight.
- 2.3 It is plain being peradventure that there is absolutely no way the site can be described as being 'isolated'. It is well connected to existing services, being a short walk to bus stops on the A259.

Chidham and Hambrook Neighbourhood Plan,

- 2.4 Consideration though has to be given to the Chidham and Hambrook Neighbourhood Plan which was made in 2016. Policy LP1 of the Neighbourhood Plan which is the requirement for homes and states:

'Development of the following will be supported: ... Development of ten units or fewer on windfall sites. The number and variety of such windfall sites makes it too prescriptive to identify them individually and the preferred approach is to assess the suitability of each site at the time the development proposal is made in accordance with development plan policies.'

- 2.5 The glossary within the neighbourhood plan states that windfall sites are:

'Sites which have not been specifically identified as available in the Local Plan process. They normally comprise of previously developed sites that have unexpectedly become available.'

- 2.6 There is NO requirement that sites must be within the built-up boundary.
- 2.7 There are now numerous examples of one or more dwellings being permitted under this policy and those in the immediate vicinity include:
- Orchard Farm, Drift Lane – 1 dwelling – CH/20/00164/OUT
 - Orchard Farm, Drift Lane – 9 dwellings – CH/22/02273/FUL¹
 - Ronic House, Main Road – 5 dwellings – CH/20/00075/FUL
 - Coastway Cottage, Drift Lane – 1 dwelling – CH/19/00915/FUL

¹ At appeal but council accepted the policy principle with the only issue being alleged loss of an employment site

- Appleton House Farm, Drift Lane – 1 dwelling – CH/19/02312/OUT
- 2.8 In addition, 26 dwellings were permitted a short distance to the west at Chas Wood – CH/20/01854/OUT refers.
- 2.9

Summary on Development Plan Considerations

- 2.10 The proposed conforms with Policy LP1 of the Chidham and Hambrook NP, but not Policies 2 and 45 of the Local Plan. That is because it is clear that windfall development can take place beyond existing settlement boundaries.
- 2.11 There is a conflict in approach between Policy LP1 and Policies 2 and 45, as Policy LP1 envisages development taking place outside the settlement boundary of Chidham in circumstances not permitted by Policy 45.
- 2.12 It is clear that use of land as garden for a dwelling in the countryside falls under the category of being previously developed land as defined within the NPPF. The Neighbourhood Plan, which forms part of the Development Plan, supersedes the Local Plan by virtue of its more recent adoption date therefore in regards to the principle of the dwelling, policy LP1 of the Neighbourhood Plan superseded policy 45 of the Local Plan. The proposed erection of one dwelling is therefore considered to be acceptable in principle, subject to compliance with other policies and assessment of material considerations.
- 2.13 In those circumstances, in accordance with section 38(5) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), NP Policy LP1 should override LP Policy 45 as it is the most recently adopted development plan policy.
- 2.14 In the recent case for the front plot at Orchard Farm [20/00164/OUT refers] the Council have taken the view that compliance with LP Policy 45 is still required in terms of meeting an identified local need. In this regard the recent Parish Housing Needs Assessment has identified a need for 2 and 3 bedroomed houses. The application is for a 2 bedroomed dwelling which will meet this identified need and therefore would meet a local need in compliance with LP Policy 45.
- 2.15 This approach was accepted by officers and the committee through the grant of that the single frontage plot.

The National Planning Policy Framework, NPPF3, July 2021

- 2.16 Paragraph 11 of the framework sets out a presumption in favour of sustainable development and states that where the development plan is absent, silent or relevant policies are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole or specific framework policies indicate that development should be restricted.

- 2.17 Therefore, the first assessment to be made in respect of the applicability of Framework paragraph 11 is whether or not there are any relevant up-to-date development plan policies.
- 2.18 Paragraph 80 of the NPPF v4, advises that "*Planning policies and decisions should avoid new isolated homes in the countryside*" unless there are special circumstances (of which examples are cited in that paragraph). This phrase repeats the phrase used in the previous versions of the Framework at paragraphs 79 and 55 and with para 55 being subject to High Court and Court of Appeal judgements, with the Court of Appeal handing down its judgement on 28th March 2018 **[2018] EWCA Civ 610**.
- 2.19 The third point before the Court of Appeal is that the adjective "isolated", which was the focus of argument before the Court, is itself generally used to describe a location. It is not an unfamiliar word. It is commonly used in everyday English. It carries the ordinary sense of something that is "... [placed] or standing apart or alone; detached or separate from other things or persons; unconnected with anything else; solitary" (see Oxford English Dictionary, second edition). In Lindblom LJ's view, in its particular context in paragraph 55 of the NPPF, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is, or is not, "isolated" in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
- 2.20 What constitutes a settlement for these purposes is left undefined in the NPPF. The NPPF contains no definitions of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population. *It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement* [Emphasis added]. In Lindblom LJ's view, **a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach**. Whether, in a particular case, a group of dwellings constitutes a settlement, or a "village", for the purposes of the policy will again be a matter of fact and planning judgement for the decision-maker. In the second sentence of paragraph 55 the policy acknowledges that development in one village may "support services" in another. It does not stipulate that, to be a "village", a settlement must have any "services" of its own, let alone "services" of any specified kind. [my emphasis]
- 2.21 The Court was satisfied that this reading of the policy in paragraph 55 fits the broader context of the policies for sustainable development in the NPPF and guidance in the PPG. In Lindblom LJ's opinion, the language of paragraph 55 is entirely unambiguous, and there is therefore no need to resort to other statements of policy, either in the NPPF itself or elsewhere, that might shed light on its meaning. In particular, the Court did not accept the appellant's argument that the word "isolated" in paragraph 55 must be understood as meaning either (a) "physically isolated" or (b) "functionally isolated" or "isolated from services and facilities"; that the decision-maker must therefore address two questions – first, whether the proposed new

dwelling would be physically separate or remote from any other dwelling, and secondly, whether it would be isolated from services and facilities; and that if the proposed development would be either separate or remote from other dwellings or separate or remote from services and facilities, it offends the policy. This would be a strained and unnatural reading of the policy. In Lindblom LJ's view, it is neither necessary nor appropriate to gloss the word "isolated" by reading an additional phrase into paragraph 55 whose effect would be to make the policy more onerous than the plain meaning of the words it actually contains. No such restriction is apparent in the policy, or implicit in it.

- 2.22 In the light of the Court of Appeal judgement and taking into the specific development adjacent to the application site it is concluded that the site is not 'isolated'. A prescriptive and restrictive interpretation is inappropriate and a more 'broad brush' approach is required when considering the application of this policy. It is clear that a settlement for the purposes of paragraph 80 can include a cluster of dwellings and they can be without services and away from public transport.
- 2.23 In this particular case it is clear that the site forms part of a clearly defined grouping of housing which extends north and south of the A259. It is not in an isolated location.
- 2.24 The walking distance – calculated using Geodistance - to the 700 Coastline bus service on the A259 is just 100m – well within an easy walking distance. In addition, the railway station is 1.2km walking distance within the 2km maximum for commuting. Furthermore, the village hall is 170m; the nearest public house 400m; and, the village primary school is a 840m walk. The site is clearly sustainably located.
- 2.25 Moreover, Lindblom LJ also made clear, in its particular context in paragraph 55 of the NPPF, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. The analysis set out above clearly demonstrates that the proposed dwelling would NOT be physically separate or remote from a settlement.
- 2.26 On this basis it is clear that paragraph 80 of Framework v4 does not apply. Therefore paragraphs 78 and 79 apply which make clear that in the rural area decisions should be responsive to local circumstances and support local services.
- 2.27 The Framework also makes clear in various places that the use of PDL is actively encouraged especially where it is located in a sustainable location.
- 2.28 The housing need in this case – in a sustainable location and on PDL - is clearly in full compliance with the Framework v4 is therefore achieved.

3 PRECEDENTS

NP Policy LP1 Precedents

Planning application 16/03544/FUL – Signals, Broad Road, Hambrook.

- 3.1 In this case for a new dwelling, the Parish considered the site to comprise a brownfield site. Council planning officers in their committee report failed to consider NP Policy LP1 can concluded that permission should be refused on the basis of conflict with LP Policy 45. At committee, councillors disagreed and permitted the dwelling on the basis that the site was a brownfield site.

Planning application 16/04132/OUT – Greenacres Nursery, Main Road, Nutbourne.

- 3.2 This site is within the Chichester harbour AONB and officers recommended refusal on the basis of conflict with LP Policy 45. The agents for that application sought Counsel opinion when the committee report was available. Following receipt of that legal opinion, officers changed the recommendation to PERMIT on the basis that the development was in accordance with NP Policy LP1 and since the NP was more up to date than the LP then NP Policy LP1 took precedence over LP Policy 45 where any conflict existed.

Planning application 17/03622/OUT – Saab Garage, Main Road, Cutmill.

- 3.3 This application sought to demolish the garage and erection 5 dwellings. Officers noted in the committee report that NP Policy LP1 was a windfall policy and enabled the provision of ten housing units or less on previously developed land. The scheme was considered to be policy compliant on this basis and permission was granted.

Planning application 18/01449/FUL – Cockleberry Farm, Main Road, Cutmill.

- 3.4 This application sought permission for 2no self-build units on PDL. The officer delegated report noted as with the Saab Garage scheme that NP Policy LP1 allowed countryside sites to come forward for housing if they comprises PDL and were not isolated. It was considered that the site comprised PDL and was in a sustainable location. Permission was granted.

Planning application 19/00915/FUL – Coastway Cottage, Drift Lane, Chidham.

- 3.5 This property is the next door property, to the south of the railway line. The application sought permission for *"Demolition of single storey side extension, erection of 2 storey rear extension and erection of 1 no. dwelling"*.

- 3.6 Under the heading of 'Principle' in the officer delegated report the following conclusions are drawn:

The application site is outwith any defined settlement boundary, within the countryside, whereby new market dwellings are not normally permitted; in accordance with Local Plan Policies 1, 2 and 45. However, the Chidham and Hambrook Neighbourhood Plan, which forms part of the Development Plan, supersedes the Local Plan by virtue of its more recent adoption date, and has a policy that does allow for new dwellings outwith the settlement boundaries. Policy LP1 of the Neighbourhood Plan states that new residential "development of ten units or fewer will be supported on windfall sites". The policy goes on to state that "the number and variety of such windfall sites makes it too prescriptive to identify them individually and the preferred approach is to assess the suitability of each site at the time the development proposal is made in accordance with development plan policies".

The Glossary within the Neighbourhood Plan clarifies what constitutes a 'windfall site' as follows: "Sites which have not been specifically identified as available in the Local Plan process. They normally comprise of previously developed sites that have become unexpectedly available". It has been established, within High Court ruling 'Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015)', that residential gardens outside of settlement boundaries constitute brownfield land or 'previously developed land' (PDL). Therefore, the proposed site falls under the category of being both PDL and residential windfall site. The proposed erection of 1no dwelling is therefore considered to be acceptable in principle, subject to compliance with other policies and assessment of material considerations.

- 3.7 This case was the first single garden plot that has come forward under NP Policy LP1 and as it relates to a property in Drift Lane, but further away from the A259, is a clear and substantial precedent.

Planning application 19/02312/OUT – Appleton House Farm, Drift Lane, Chidham.

- 3.8 This is the first property on the east side of Drift Lane that is north of the railway line. The application sought permission for "Outline application with all matters reserved for 1no 4-bedroom 1.5 storey dwelling."

- 3.9 Under the heading of 'Principle' in the officer delegated report the following conclusions are drawn:

The application site lies outside any defined settlement boundary, within the countryside, whereby new market dwellings are not normally permitted; in accordance with Local Plan Policies 1, 2 and 45. However, the Chidham and Hambrook Neighbourhood Plan, which forms part of the Development Plan, supersedes the Local Plan by virtue of its more recent adoption date, and has a policy that does allow for new dwellings outwith the settlement boundaries. Policy LP1 of the Neighbourhood Plan states that new residential "development

of ten units or fewer will be supported on windfall sites". The policy goes on to state that "the number and variety of such windfall sites makes it too prescriptive to identify them individually and the preferred approach is to assess the suitability of each site at the time the development proposal is made in accordance with development plan policies".

The Glossary within the Neighbourhood Plan clarifies what constitutes a 'windfall site' as follows: "Sites which have not been specifically identified as available in the Local Plan process. They normally comprise of previously developed sites that have become unexpectedly available". It has been established, within High Court ruling 'Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015)', that residential gardens outwith settlement boundaries do constitute brownfield land or 'previously developed land' (PDL). Therefore, the proposed site falls under the category of being both PDL and residential windfall site. The proposed erection of 1no dwelling is therefore considered to be acceptable in principle, subject to compliance with other policies and assessment of material considerations.

With regards to countryside development, the scale, siting and design of the proposed house it to be confirmed at the reserved matters stage; therefore it is not possible to fully assess any impact. However, looking at the overall site and general considerations, the land is between two existing two-storey dwellings to the north and south, a one-and-a-half-storey annexe to the east, and commercial site across the road to the west. Given the site is surrounded on all sides by buildings, and the prevailing height of these is equal to or higher than the one-and-a-half-storey proposed, it is considered that an appropriately designed and scale of house can be accommodated within the site without being to the detriment of the countryside. Furthermore, additional measures can be secured at the reserved matters stage such as landscaping and boundary treatments to help the development assimilate into its rural surrounds. The principle of a dwelling within the site is therefore not deemed to be at odds with the rural area or countryside policies.

Planning application 20/00164/OUT – Orchard Farm, Drift Lane, Chidham.

- 3.10 Finally, we have the frontage plot at Orchard Farm. As set out earlier this application sought permission for 1no 3bed single storey dwelling, being amended from a 4bed dwelling when first submitted in order that it was of a size which reflected their Local Needs Assessment. With this amendment the Parish withdrew their objection.

4 CONCLUSIONS

- 4.1 Following the detailed analysis of policy in section 3 above it is clear that the most relevant local plan policy [Policy 45] is either out of date or not relevant.
- 4.2 NP Policy LP1 is both more relevant and more up to date.
- 4.3 In the recent case for the front plot at Orchard Farm [20/00164/OUT refers] the Council have taken the view that compliance with LP Policy 45 is still required in terms of meeting an identified local need. In this regard the recent Parish Housing Needs Assessment has identified a need for 2 and 3 bedroomed houses. The application is for solely 2 and 3 bedroomed dwellings which will meet this identified need and therefore would meet a local need in compliance with LP Policy 45.
- 4.4 The site clearly satisfies the definition of previously developed land, as set out in the Framework – with it comprising garden of a dwelling in the countryside.
- 4.5 The A one storey dwelling with bedrooms in the roofspace would be in keeping with the overall mixed character of the immediate vicinity – it will be low in profile being a 2 bed.
- 4.6 It is located in a sustainable location, being within walking distance of the primary school, village hall and public house. It is also very close to the regular bus service that runs along the A259.
- 4.7 There are now a number of cases in the Parish - as set out in section 4 above - which have established that new housing can come forward in the countryside on PDL under the terms of NP Policy LP1. All of these sites are within easy walking distance of the application site.
- 4.8 LP Policy 45 is permissive towards sustainable development in the countryside where it meets a local need. To this extent there is also compliance with this policy and the Parish Council's Local Housing Needs Assessment identifies a clear need for 2 and 3 bed dwellings and also bungalows.
- 4.9 Therefore, the clear presumption in favour of sustainable development applies in this case and planning permission should be granted for this development which is in full accordance with NP policy LP1; LP Policy 45 and the NPPF.