

The Development Plan and 'Weight' of the Supplementary Planning Guidance

Windroos
Worthing Road
Littlehampton
West Sussex

Savills Planning & Regeneration
Brunswick House
Brunswick Place
Southampton
SO15 2AP

023 8071 3900
www.savills.com/planning
www.savills.com/urbandesign

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Context

1. Section 38(6) of the Town and Country Planning and Compulsory Purchase Act, 2004 states: *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the **determination must be made in accordance with the plan unless material considerations indicate otherwise.**"* (bold my emphasis)
2. The development plan consists of the Arun District Local Plan, 2003 'saved' policies of which Policy SITE7 'Land at Toddington, Littlehampton' is relevant and refers to the adjacent Taylor Wimpey site and the Lyons site.
3. Policy SITE7(ii) refers to 'improvements to the A259 Worthing Road'. The Taylor Wimpey scheme provided for a new means of access into the site from the A259, approved under LU/45/06, along with a number of highway works including the closure of the previous junction onto Toddington Lane. These works have now been implemented following the commencement of the Taylor Wimpey development.
4. The Transport Assessment for LU/45/06 tested a development of SITE7 for 546 dwellings. The actual number of units permitted on the Taylor Wimpey site totalled 393 dwellings meaning that an allowance for 153 dwellings was made for the development on the remainder of SITE7, i.e. the Lyons site. The officer's report to LU/45/06 in the conclusions section referred to the *"highway improvement works as extensive"*. The highway improvement works permitted under LU/45/06 have been carried out and ensure compliance with Policy SITE7(ii).
5. Policy SITE7 makes no reference to only one means of access being provided to/from the Taylor Wimpey and Lyons site onto the A259.
6. Policy SITE7 does not require the closure of the Lyons accesses.
7. Policy SITE7 does though refer to the development brief (Development Brief for Land at Toddington, 2003 – Supplementary Planning Guidance adopted October 2003) in that: *"all proposals for development will be **considered** in light of the brief"* (bold my emphasis)
8. Within the now superseded PPS12 (2004) it stated that under the pre-2004 development plan system, SPGs were a non-statutory local authority approved guidance that is a material consideration when determining planning applications. It further stated that on commencement of the new plan-making system, existing SPG would not automatically lose their status but would continue to exist as non-statutory guidance whilst the relevant saved policies are in place.

9. This SPG continues to be non-statutory local authority approved guidance. It is crucial for the Council to understand that the 'improvements to the A259' as set out in Policy SITE7 forms part of the development plan. The reference to access in the SPG is guidance only and is not part of the development plan.
10. The SPG is a material consideration because Policy SITE7 has been saved. However, it is necessary to determine the level of 'weight' that should be attached to the SPG, which forms guidance to any proposals. The following is relevant to enable this assessment:
 - The saved Local Plan policy (SITE7) is of significant weight. It makes no reference whatsoever to a single means of access to the entire site from the A259 and merely cites 'improvements to the A259'.
 - **The SPG has not been subject to independent examination** and therefore, the means of access has not been independently tested by an Inspector, in contrast to the Local Plan policy.
 - **SPGs are only intended to supplement development plan policies** and they should not introduce new policy such as restricting means of access particularly where this has not been referred to at all within the saved local plan policy.
 - There have been recent and on-going pre-application discussions with West Sussex County Council, who are the Highways Authority. Some of the extracts are set out below and are highly relevant as a 'material consideration'.
 - The SPG is almost seven years old and clearly circumstances will change over time. The recent discussions with WSCC on the means of access must hold greater weight than the SPG in this regard and in light of the evidence base conducted by the applicant's highways consultant.
 - A significant amount of documentation has been produced to justify the means of access. This has been produced at the request of WSCC at considerable expense to the applicant. A contrary decision by the local planning authority would be unreasonable and at odds with WSCC's pre-application responses to date.
 - The officer's report to LU/45/06 stated (in the Conclusions section), in making reference to the SPG, that "*Whilst **the Brief** is not intended to be prescriptive, it is intended to **act as a framework to guide the successful development of the land.***" (bold my emphasis)
 - The Lyons site currently benefits from two unrestricted means of access onto the A259. Vehicles exiting the site are permitted to turn right across the eastbound carriageway, similarly westbound vehicles may turn right into the site across the carriageway with the absence of any right turn lane. The Lyons site has expanded significantly in recent years with a large number of lorries and trailers and other vehicle movements in association with the authorised horticultural haulage operations on the Site.
 - The existing access arrangements and their ability to continue in perpetuity is a significant material consideration that should be accorded due weight by the Council.

The Development Brief

11. The 'Fundamental Development Principles' (page 16) set out in the SPG makes reference to creating vehicular access from Worthing Road and closing the existing substandard Toddington Lane/ Worthing Road access. No mention is made in the Fundamental Development Principles to close the Lyons site access or creating a single means of access to SITE7. The fact that this does not form part of the fundamental development principles in the SPG and its omission from the ADLP is highly significant.
12. Paragraphs 6.8 to 6.10 of the SPG address the vehicular access to and from the site, but this makes no mention of any closure to the Lyons access as part of any development proposals. Indeed the only reference to this is at paragraph 7.19 within the Implementation, Social Infrastructure & Design chapter, which states: "...Windroos Nursery, has **existing access** direct from Worthing Road which serves the business currently operating there. Any **intensification of use of that access** to serve new development would not be acceptable to the **Highways Authority**, but a **limited amount of new housing** may be able to be served in this way, for a **temporary period, pending connection to the permanent access road network** to the west." (bold my emphasis)
13. The supporting highways documentation clearly demonstrates that the development for 91 dwellings would generate fewer vehicle movements in comparison to the existing use of the site; accordingly the development proposals will result in no intensification of use of that access. Secondly, paragraph 7.19 is only referring to intensification of the 'existing access' and does not mention any improved new access arrangements, which will be the case for this proposal. The existing accesses will be replaced by a greatly improved new access onto the A259 which will improve highway safety. This is an important material consideration.
14. Arun Council will also accept that the wording of paragraph 7.19 refers to whether any intensification is acceptable to the Highways Authority (i.e. WSCC). This means that Arun is not the determining Authority in this respect and it must defer to WSCC, who have already indicated their acceptance in principle – see summary excerpts below.
15. The Lyons site is capable of being self-contained, but with the potential for future links into the Taylor Wimpey site. A development of 91 dwellings would satisfy the 'limited amount of new housing'.
16. The 'temporary period' can be satisfied at any time once the third party land ownership issue is resolved in relation to the ransom strip by Store Property although this is not essential as the site can be self-contained if necessary. The access arrangements can be readily overcome by Arun District Council through compulsory purchase if its desire for a single SITE7 is overriding. Furthermore, the temporary period is qualified by reference to 'pending connections' to the access road to the west. The site layout allows for these 'pending

connections' at any stage. There are clearly mechanisms that permit these connections to be made at a later stage to enable compliance if necessary, with this period.

17. In summary, the proposals are fully in compliance with the guidance (specifically paragraph 7.19) set out in this SPG, for the following reasons:
 - a. The **existing accesses will be replaced** with a new improved access.
 - b. There will be **no intensification of the use of any access** into the Lyons site. In fact, the amount of development will result in significantly less intensive access to this site.
 - c. The **Highway Authority supports the access proposals in principle**.
 - d. The access will serve a **limited amount of new housing**.
 - e. The proposals allow for the access to be closed over time following connection into the access roads to the west and thereby the **access is capable of being for a temporary period only**.
18. Finally, the potential improvements to the A259 (Improvement Line) are safeguarded by the development proposals as demonstrated on the Indicative Site Layout drawings. (Note: the detailed site layout and thereby exact location will form part of subsequent Reserved Matters applications).

West Sussex County Council – Summary Excerpts

"...if the access arrangements are designed to standard, and result in no safety or capacity issues, then it would be difficult to resist any proposal." (Ian Gledhill, Development Control Assistant, WSCC – email 29 January 2010).

"... the principle of the proposed access arrangement has been agreed through discussion with Tony Martin, with the access proposals being to create a single point of vehicular access to allow left and right turns in, but to allow only left turns out. In these regards, I'd have no comments to make and the principle is acceptable." (Ian Gledhill, Development Control Assistant, WSCC – email 1 December 2009).

"...WSCC Highways would have difficulty in objecting to an access at this location. Whilst their preference would ultimately be to provide a link through the neighbouring site as per that identified within the Development Brief, WSCC Highways would not be able to object to the access if designed to adoptable standards, and no highway safety matters were raised through the Stage 1/2 RSA." (Upton McGougan Ltd Meeting Minutes – Meeting date 31 July 2009 – Minutes confirmed as accurate by Tony Martin, Principal Transport Planner, WSCC – email dated 4 August 2009).

Conclusion

19. The start point in considering the proposals is the Development Plan, having regard to Section 38(6) of the Planning and Compulsory Purchase Act. In this case it is the saved policies of the Arun Local Plan.
20. The relevant saved policy is Policy SITE7 of the Local Plan which refers to improvements to the A259. These improvements have already been approved and implemented under earlier planning permissions.
21. The development plan policies are silent on the closure of the existing accesses to the Lyons site and on only one means of vehicular access to SITE7 overall, as part of any development proposals.
22. The Development Brief is Supplementary Planning Guidance (SPG). SPGs are non statutory local authority approved guidance. SPGs are not part of the development plan but remain a material consideration because Policy SITE7 has been saved.
23. The SPG only supplements the development plan policy; it cannot introduce new policies.
24. The closure of the Lyons accesses or the provision of only one means of access to SITE7 does not form part of the SPG's Fundamental Development Principles. The Vehicular Access to/from the Site section in the SPG also makes no reference to the above.
25. Only paragraph 7.19 of the SPG actually refers to the Lyons site access. However, the proposals comply with paragraph 7.19 of the SPG because:
 - **the existing accesses will be replaced with an improved access modelled on the one built for the Taylor Wimpey site**
 - **there would be a less intensive use in comparison to the existing use**
 - **it will serve a limited amount of new housing, and**
 - **the indicative layout demonstrates the future potential for connections into the Taylor Wimpey site.**
26. The SPG is a material consideration but it is only guidance. The SPG does not outweigh the development plan and its policies. Furthermore, the existing accesses are a material consideration as they are unrestricted and generate a significant amount of vehicle movements.
27. The SPG is outweighed by recent WSCC pre-application responses to the development proposal but in any event it has been demonstrated that the proposals are not contrary to the guidance in the SPG.

