

Mr Simon J Davis
 Directorate of Place
 Arun District Council
 Civic Centre
 Maltravers Road
 Littlehampton
 BN17 5LF

Waterfront House
 Waterfront Plaza
 35 Station Street
 Nottingham
 Nottinghamshire
 NG2 3DQ

Our ref WXT/M-00933252
 Date 12 February 2021

Delivered: By email

Dear Sirs

**PLANNING APPLICATION REF: P/1/21/PL
 LAND AT SUMMER LANE, PAGHAM**

1. We are instructed by Drew Smith Limited and wish to confirm our views on the above application for planning permission for "a change of use from agricultural land to public open space" (the "Application"). Our client owns part of the land subject to the Application (the "Application site") and the applicant does not have any ownership or control over the land concerned.
2. Our client strongly objects to the Application. We highlight the following serious concerns regarding the submission of the Application and material considerations that Arun District Council (the "Council") must give significant weight to when determining it.
3. Our client will be carefully examining the decision of the Council in respect of the Application to ensure that all correct procedures have been followed in the determination of this application including having proper regard to the up to date Development Plan and all material considerations.

Failure to notify landowners in advance of Application

4. As stated above our client owns the freehold of part of the land within the Application site registered at the Land Registry with title number WSX408542. The rest of the freehold of the land is owned by the Langmead family and registered at the Land Registry with title number WSX340729. The applicant does not own any of the land within the Application site.
5. Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 ("DMPO") requires all applicants to give the requisite 21 days' advance notice of the application to any person who is an owner of the land to which the application relates. Article 13(2) states that the applicant must take "reasonable steps" to ascertain the names of addresses of the landowners. Article 14 of the DMPO states that where an application is made, the applicant must certify that the requirements of Article 13 have been satisfied.

6. Section 65(5) of the Town and Country Planning Act 1990 ("TCPA") states clearly that local planning authorities "must not entertain" applications where statutory requirements to notify landowners of planning applications and certify that they have done so have not been met.
7. In section 25 of the application form, Certificate C has been completed stating that 'all reasonable steps' were undertaken to identify the landowners, including the carrying out of 'Land Registry searches'. It notes that not all landowners could be identified but that the requisite notice was served on our client Drew Smith Limited. In fact, no such notice was ever received by our client. The first time they were made aware of the Application was on 28 January whilst the planning officer was making a site visit.
8. In addition, we are informed that the other landowners, the Langmead family were also not given prior notice of the Application. This is reflected in Certificate C by the fact that the applicant appears to have not ascertained that they were a landowner. However, if the applicant had carried out a proper Land Registry search (as they are required to do under Article 13(2) DMPO), they would have easily found that the Langmead family were landowners.
9. It is therefore clear that the applicant has failed to comply with the statutory requirements to notify our client and the other landowners of the Application in advance of submission. We therefore request that the Application is not put before the Council's planning committee until all necessary statutory requirements and notice periods have been complied with.

Application not in accordance with the Development Plan

10. In any event, the Application should be refused as the proposed change of use is not in accordance with the Development Plan. The determining policies in this case include H SP1, H SP2 and H SP2a. Policy H SP1 and the following paragraphs note that the Development Plan allocates a number of sites across the district which will provide an important contribution to the future housing supply, and provide a contribution to the unmet housing needs which exist in the area.
11. Policies H SP2 and H SP2a go on to state that the allocated sites include 'Pagham South' (reference SD1) as identified on Local Plan Policy Map 3. That map clearly shows allocated site SD1 as encompassing the majority of the Application site south of Summer Lane. It also clearly shows the Application site as falling within the Pagham Built Up Area Boundary. Policy SD SP2 states that development should be focused within with the Built Up Area Boundary. Policy H SP2a confirms that Pagham South is to provide up to 400 dwellings across the plan period.
12. It is trite law that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Nowhere in the Development Plan does it state that the Application site should be used entirely for open space for the purposes of public recreation.
13. Whilst there are policies in the Development Plan that might support and encourage the use of land for public recreation, the Development Plan must be read as a whole. This means that those policies supporting the use of land for public open space must be considered in the context of those policies (H SP1, H SP2 and S SP2a) which allocate parts of the district for the delivery of housing. To suggest, as the applicant does, that the general policies supporting health and recreation should override allocated sites is wrong.
14. Furthermore, the Development Plan and associated supplementary planning documents already require that any housing development on allocated sites should contain an appropriate

amount of public open space. In particular, the Council's Open Space Supplementary Planning Document (January 2020) (the "SPG") contains requirements for certain levels of open space per 1,000 population (see Table 3.1). Therefore, housing development and new public open space on the Land are not mutually exclusive. Indeed, extant planning permissions for residential development on the Application site already provide for a generous level of new public open space (see paragraphs 22 to 23 below for further details).

15. Finally, the applicant cites the presumption in favour of sustainable development paragraph 14 of the NPPF and suggests that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. However, this approach is only engaged where the 'development plan is absent, or silent, or relevant policies are out of date'. The Council's current Local Plan (2011-2031) was adopted in 2018 after undergoing a thorough examination. There is no credible evidence to suggest that the determining policies in this case are out of date or silent on the question of development on the Application site. In fact, the Development Plan is very clear as to the allocation of much of that site for housing.

Other material considerations

16. To re-iterate, the application must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In so far as there are other material considerations here, they also weigh heavily against the grant of permission.

(i) Grant of planning permissions for residential development

17. Our client has already been granted permission for the erection of 90 dwellings with associated infrastructure and open space on a large part of the Application site. Outline permission for the development (reference P/58/15/OUT) and reserved matters approval (reference P/70/19/RES) have been granted. That planning permission has since been lawfully implemented as has been accepted by the Council with substantial operations currently taking place on the Application site.
18. In addition, we understand that outline permission has been granted for the erection of up to 400 dwellings, a care home and associated infrastructure and open space on adjacent land within the Application site (reference P/140/16/OUT).
19. Any grant of permission for a change of use of the land to open space would conflict with the Council's earlier decisions to grant planning permission for residential development; decisions that were made on a sound basis in accordance with planning policy at the time.
20. Consistency in decision making is of paramount importance, especially where the Application concerns the same land and where the Development Plan still supports residential development. Any decision to grant permission for the proposed change of use to open space would set a confusing and unhelpful precedent at a time when there is a pressing need for housing in such sustainable locations.
21. A grant of permission for a change of use to open space would also physically conflict with the development that has already been carried out on the Application site under application referenced P/58/15/OUT. Significant ground works have already taken place on the land and that residential development is well underway. The whole site is therefore no longer suitable for use as open space for the purposes of public recreation and any planning permission for such a change of use would not be capable of lawful implementation.

(ii) Need

22. The Application is not needed as extant planning permissions for residential development on the site (references P/58/15/OUT and P/140/16/OUT) already make more than adequate provision of public open space.

23. Our client's planning permission under reference P/58/15/OUT is set to provide a total area of 2.57 hectares of high quality on-site public open space including play area provision. In addition, the planning permission for residential development on the adjacent land with reference P/140/16/OUT may provide a further 5.35 hectares. This totals 7.92 hectares and is well in excess of the level required by the Council's existing SPG guidelines. In addition, financial contributions totalling £461,150 are to be paid to mitigate against any adverse impacts on the nearby Pagham Harbour SPA in accordance with policy ENV DM2 and the NPPF. Planning conditions also provide further protection for protected bird species in the area.

(iii) Access to the Land

24. The Application site is under the landowners' control and access is prevented by way of security fencing and hoarding associated with the construction works underway. In short, there is not access for use of the whole site as open space for the purposes of public recreation.

Conclusion

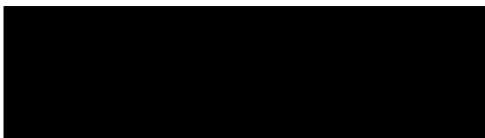
25. In summary, the Council will be aware that it must determine the Application in accordance with the Development Plan (as highlighted above); having full regard to the material considerations concerning the inappropriateness of the proposed change of use due to existing planning permissions on the land for residential development, the fact that sufficient open space is set to be provided under those planning permission and that public access to the land is, in any event, inadequate.

26. Due to the reasons outlined above, we request the Application be refused.

27. We have been instructed to maintain a watching brief in respect this Application and will be taking an interest in how this application is to be determined.

Please direct any response to Will Thomas or Karen Howard at Shoosmiths via email.

Yours faithfully



SHOOSMITHS LLP