

Recommendation Report for Planning Permission

REF NO: P/48/17/PL

LOCATION: 251 Pagham Road & the Land R/O
251 Pagham Road
Pagham

PROPOSAL: Application for variation of condition no's 28 & 29 imposed on planning permission P/125/14/PL for the relocation of reptiles to an off site receptor site.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

As above. The applicants have obtained agreement from the Brook Meadow Conservation Group for the translocation of those reptiles (Slow Worms, Grass Snakes, Common Lizards) currently on the site to the Brook Meadow Local Nature Reserve in Emsworth approximately 9 miles from the site. The submitted "Reptile Mitigation Addendum" describes the processes for the capturing and movement of reptiles from the site. It also includes a proposed grass snake enhancement for the Brook Meadows site.

SITE AREA

1.4 Hectares.

TOPOGRAPHY

Predominantly flat.

TREES

There are a number of trees within and adjacent to the site. The majority of those within the central areas are fruit trees. There are larger non-fruit trees close to the north and west boundaries.

Tree Preservation Orders have been served on three trees on the site. TPO/P/1/15 refers to 1 Ash Tree (referenced within the application as T28) located adjacent to the drain and proposed to be within the Public Open Space (POS). TPO/P/2/15 refers to 2 Poplar Trees (referenced within the application as T29 & T32) located adjacent or close to the north boundary. These are proposed to be retained.

BOUNDARY TREATMENT

Various - hedges, ranch style fencing, drainage ditch, close boarded fencing. The boundaries to 8 & 9 Brooks End are formed by approximately 2m high close boarded fencing

supplemented by existing tree planting within the site (which is to be retained). The rear boundaries of 239-249 Pagham Road are relatively low (around 1m) and open. Some of these properties have created unauthorised accesses into the site.

SITE CHARACTERISTICS

Roughly L shaped and includes 251 Pagham Road, a two storey dwelling. This property comprises of three single storey outbuildings, two of which have pitched roofs and are situated to the north of the dwelling. The third is a flat roofed former shop building to the front. There is residential garden to the rear and then a large amount of additional land to the west formerly used for horticultural purposes (for sale in the shop) and the grazing of animals. There are three dilapidated greenhouses on the land as well as a number of fruit trees. Much of the land is littered with grassed tufts. The site access is from Pagham Road between 251 and the Inglenook Hotel. There are 2 on street layby spaces on the site frontage.

CHARACTER OF LOCALITY

The site is bordered by residential properties & a public house/hotel fronting Pagham Road; by grazing land with a residential mobile home park beyond to the north & north-east; grazing land to the south with residential properties beyond which front onto Summer Lane; and open farmland to part of the western boundary.

Nos. 239-249 Pagham Road to the east are two storey properties with west facing principal windows and rear gardens. The two Brooks End dwellings that border the site do so with their flank walls and these elevations do not contain any principal windows. There are rear elevations of mobile homes totalling around 10-12m of the far west boundary.

RELEVANT SITE HISTORY

P/125/14/PL	Demolition of existing dwelling & ancillary buildings & erection of 40 no. dwellings with associated access, car parking, cycle & refuse storage, hard & soft landscaping & amenity space. This application is a Departure from the development plan	App Cond with S106 30-06-2016
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P/137/16/PO	Application to modify a planning obligation dated 30th June 2016 under planning application P/125/14/PL to request change referencing 'social rent' to 'affordable rent'.	Approve 04-05-2017
P/33/17/DOC	Application for approval of details reserved by conditions 34, 35 & 36 imposed on planning permission P/125/14/PL relating to drainage	DOC Approved 02-06-2017

Planning permission for 40 dwellings on the site was granted in June 2016 (P/125/14/PL) and will not expire until June 2019. The conditions to be varied by the current application are as follows:

(28) The development must be carried out in accordance with the reptile mitigation and enhancement measures as set out in section 6.3 of the submitted Ecosupport "Phase I & II Ecological Surveys" Rev 10/6/15. The enhancements and mitigation measures shall be retained and thereafter maintained.

(29) Prior to development or any preparatory works commencing the reptile population shall be translocated only in accordance with the submitted reptile mitigation strategy and retained as such thereafter, unless otherwise first agreed in writing by the Local Planning Authority.

Application P/137/16/PO allowed for a slight change to the wording of the agreed section 106 Legal Agreement (changing the words 'social rent' to 'affordable rent').

Application P/33/17/DOC approved the discharge of the three surface water drainage conditions imposed on P/125/14/PL.

REPRESENTATIONS

Representations received:

Pagham Parish Council

Pagham Parish Council

"The Council wished to OBJECT to this application, as no provision had been made for the retention of the "wildlife buffer zone" despite the proposed translocation. The Council felt it was essential that this area was retained to provide habitat in the future. It noted and supported the comments of Chichester District Council's Ecology Officer dated 8th June 2017 in this regard. Furthermore, it would like to see a condition requiring the reintroduction of the affected species once the buffer zone reached maturity. Cllr Mr Hailey abstained."

The Parish Council were then asked to reconsider the application in light of statements by Chichester DC Ecology and by the applicant. Their second response was as follows:

"The Council did not wish to withdraw its objection and felt that development on the plot should progress without translocation. The habitat was already mature at the site and it could not see why such habitat should be destroyed to facilitate building. It wished to sustain its objection. Cllr Mr Hailey abstained from the vote."

In addition, one letter of objection from Parish Councillor Mr Hailey. The full text of this 1.5 page letter is on the Councils website but to summarise:

(1) Potential loss of proposed wildlife and habitat improvement works proposed on approved application P/125/14/PL

- * Fast tracking the development to the detriment of existing wildlife habitat;
- * Translocation of the reptiles will likely result in a future request for removal of the wildlife buffer & wildlife enhancements;

(2) Contrary to Natural England's advice (Natural England Technical Information Note TIN 102).

(3) Translocation of slow worms would be destructive as identified in research published by Science Direct

- * Science Direct research states that the conservation value of such exercises is unproven for many species;
- * The research describes a case study re slow worm translocation and states that the translocated slow worms were in a poorer condition and there was little evidence of successful reproduction;

(4) Contrary to Government Standing Advice (March, 2015)

- * Reptile mitigation planning should involve changing a layout / not developing areas used by reptiles, displacing reptiles from sensitive areas by changing vegetation, changing development timings, translocating reptiles to other sites but only as a last resort and sites to be as close as possible to the existing, within same local authority area and where not already colonised by the translocated species.

Comments on Representations received:

As set out above, the Parish Council were requested to reconsider the application but they maintained their objection on the grounds that translocation should not occur and there was no justification for the destruction of habitat to facilitate building. This was despite the comments of the Councils Ecologist (see Consultation Responses section) and the following comments made by the applicant's ecologist:

"The Chichester District Council ecologist (Liz Rogers) when consulted on this application did not object to the change though wanted reassurance that the works outlined within section 6 (i.e. wildlife buffer creation) of the Phase I & II Ecological Surveys report (Ecosupport 2015) would be implemented so reptiles may recolonize the area from adjacent habitats upon maturity. An objection was however placed by Pagham Parish Council where it was requested ...' it would like to see a condition requiring the reintroduction of the affected species once the buffer zone reached maturity'. Having discussed this point with the CDC ecologist we are both in agreement that attempting to re-capture any reptiles from the Brook Meadow Local Nature Reserve (LNR) and moving them back into the wildlife buffer is both unnecessary and against best practice. Furthermore as there is no proposal in place to have a holding pen within the Brook Meadow LNR, the likelihood that we will actually capture the same individuals from the 251 Pagham site is very slim as they will have undoubtedly dispersed into the habitats through the LNR by the time the buffer has reached maturity and mixed with the existing population. The hope here however is that once the buffer has reached maturity and is suitable for reptiles, it may naturally be recolonised by any reptiles within the boundary/adjacent habitats."

It is therefore compelling that the advice from the Council Ecologist is that the proposed translocation is acceptable. Furthermore, the applicant has confirmed that the existing proposed buffer area will be retained and will not be destroyed.

The following comments are made in respect of the objection letter:

(1) Potential loss of proposed wildlife and habitat improvement works proposed on approved application P/125/14/PL.

The applicant has confirmed that the proposed wildlife habitat will be retained and will still be subject to the same enhancement measures as proposed in the original application. There is no guarantee that the applicant will not make a future application to redevelop the wildlife buffer area but if that were to occur then such an application would be assessed at that time. It is not appropriate to assess the current application on the basis of something that is not currently proposed.

(2) Contrary to Natural England's advice (Natural England Technical Information Note TIN 102).

TIN102 states in respect of translocation that:

"If you need to move reptiles to a new location you'll have to choose a receptor site:

- * as close as possible to the development site, and within the same local planning authority if possible
- * that is at least the same size as the habitat that will be lost, and larger if the habitat to be lost is high quality (you can provide smaller habitat if it's substantially better quality)
- * that it will serve the same function as the habitat to be lost, e.g. it has hibernation features
- * with similar habitat to the area that will be lost, including water bodies
- * that doesn't currently support the same species, but can be improved to make it suitable
- * that will be safe from future development and managed in the long term

You can introduce small numbers of reptiles to an area with an existing population if you have improved the habitat so it can support the increased numbers. You must allow enough time for new habitats to become suitable for the reptiles before you start to capture them."

The submitted "Reptile Mitigation Addendum" states that:

- * The Brooks Meadow site is within 9 miles of the Pagham Road site;
- * The Brooks Meadow site is 4.5 hectares in size (so larger than the Pagham Road site);
- * The Brooks Meadow site has a good range of habitat including wet/dry meadows, scrub, woodland, watercourses;
- * The Brooks Meadow site has excellent habitat including foraging, basking & hibernation opportunities;
- * The Brooks Meadow site has a Management Plan (2015 to 2018) in place and is subject to active management;
- * The Brooks Meadow site has previously acted as a donor site from two previous development schemes in 2014 and 2015;
- * The Brooks Meadow site has a 'good' population of Slow Worms but no Common Lizards and no Grass Snakes (although the habitat is suitable for them);
- * Only a low number of reptiles are anticipated to be captured from the Pagham Road site; and
- * There are not considered to be any potential issues with exceeding carrying capacity at the Brooks Meadow site.

This document has been accepted by Chichester DC's Ecologist. Natural England were also consulted but their response just advises of the need to follow their Standing Advice (which is as set out above).

(3) Translocation of slow worms would be destructive as identified in research published by Science Direct.

The Science Direct research dates to September 1999 and is therefore more than 17 years old. It is therefore considered acceptable to instead refer to the Natural England Standing Advice and to the comments of the Council's Ecologist.

(4) Contrary to Government Standing Advice (March, 2015).

It is unclear which Standing Advice this refers to. However, in any case, it is clear that this application does not propose to develop the areas of the site set out as buffer zones. It is also considered, for the reasons set out above, that the proposal accords with Natural England's Technical Information Note TIN 102.

CONSULTATIONS

Natural England
Ecology Advisor

Consultations responses received:

NATURAL ENGLAND: No comment:

"Natural England currently has no comment to make on the variation of condition 28 and 29. Natural England has published Standing Advice on protected species. You should apply our Standing Advice to this application as it is a material consideration in the determination of applications in the same way as any individual response received from Natural England following consultation."

CHICHESTER DC ECOLOGY: No objections:

Original comments dated 08/06/17 stated:

"We are happy with the proposals to amend the reptile mitigation strategy and to translocate the reptiles to an off-site receptor site at Brook meadow Local Nature Reserve. We require confirmation however that the wildlife buffer onsite will still be retained within the scheme and habitat improvement works should still take place within this area to provide suitable habitats for wildlife including reptiles."

Second comments dated 19/06/17:

"I had a call earlier from the ecologist working on the site at 251 Pagham Road (P/48/17/PL) confirming that the wildlife buffer area will still be retained on site, though the reptiles would be translocated elsewhere. I am satisfied with this and happy with the proposed amendments. They have also commented on an objection from the parish council and their request for the reptiles to be reintroduced once the site is complete. I don't feel that this would be in the best interests of the reptiles who will have already been translocated once, and as Adam has stated it would be impossible to only catch the translocated reptiles. It would be more suitable for the wildlife buffer area to be made suitable for reptiles so any local populations can naturally colonise this area in the future."

Comments on Consultation responses:

As stated above, the wildlife buffer will be retained. Furthermore, the proposed variation to condition 28 (new condition 1) will maintain the need for mitigation/enhancements within the Pagham Road site in accordance with the previously submitted mitigation strategy.

POLICY CONTEXT

Designations applicable to site:

Outside of the Built Up Area Boundary;
Flood Zone 1;
Class C Road; and
TPO Refs TPO/P/1/15 & TPO/P/2/15.

It should also be noted that nos. 247 Pagham Road (Nyetyimber House) & 253-255 Pagham Road (The Inglenook Hotel) are both Grade II Listed Buildings.

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:	GEN29	Nature and Conservation Across the District
Publication Version of the Local Plan (October 2014):		ENV SP1 Natural Environment ENV DM5 Development and Biodiversity

PLANNING POLICY GUIDANCE

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

A new local plan is in preparation may be a material consideration when determining Planning Applications. At this stage the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015. The Examination into the submitted plan was commenced but is currently suspended whilst Arun District Council addresses matters raised by the Inspector.

A number of Main Modifications to the Arun District Local Plan 2011-2031 (Publication Version) October 2014 were approved by the Council on 22nd March 2017 and consultation on these is taking place 10 April 2017 to 5pm on Tuesday 30 May 2017. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification may also be material consideration to take into account.

Arun District Council's Development Plans:

Paragraph 215 of the NPPF ensures that specific policies in Arun District Local Plan 2003 can carry weight. The weight afforded to the policies with Local Plan policies can be assessed according to their level of consistency of the various policies with the National Planning Policy Framework.

Paragraph 216 of the NPPF confirms that weight can be given to policies in emerging plans from the day of publication. The Council resolved that the policies and maps in the Publication Version of the Local Plan be used are material considerations in the determination of this planning application. The emerging Plan was submitted in January 2015 and the examination is currently

suspended. The examination is due to re-commence in summer 2017 following publication of modifications to the Plan.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton. The written Ministerial Statement of 13 December 2016 confirms that relevant policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances arise;

- The NDP has been part of the development plan for 2 years or less or the ministerial statement is less than 2 years old
- The NDP allocates sites for housing
- The Council can demonstrate a three-year supply of deliverable housing sites

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

In December 2014, the Pagham Neighbourhood Plan was withdrawn from the examination process in order to produce further studies in respect of the impact on the Pagham Harbour SPA/Ramsar Site. This work has been completed and the Regulation 14 'pre-submission consultation & publicity' stage was undertaken between 02/10/15 and 13/11/15. It is therefore necessary, in accordance with paragraph 216 of the NPPF, to have regard to the Draft Neighbourhood Plan as a material planning consideration.

Policy 2 "Housing Site Allocations" is relevant to this proposal. It states that:

"The Neighbourhood Plan allocates the following sites for low density housing development, as shown on the Proposals Map, subject to the development principles outlined:

- ii. approximately 35 dwellings on Land south of Inglenook Hotel - comprising a mix of 1, 2, 3 and 4 bed bungalows and houses, to be delivered as part of the comprehensive scheme with development in parallel on both sites subject to the implementation of the link road at the commencement of the developments, provided the scheme:

- (a) makes provision for contributions towards the agreed Strategic Approach to Access Management at Pagham Harbour
- (b) makes an appropriate financial contribution to Pagham's Accessible Natural Open Green Space (ANOGS) shown on Inset Map 2 as the hashed area south of Summer Lane and provides open space or green infrastructure with recognised qualities within the development area that links to the ANOGS.
- (c) demonstrates that locally valued and important habitats, including wildlife corridors and stepping stones will be retained and sympathetically incorporated into its public open space scheme that lies in close proximity to a Biodiversity Opportunity Area (as defined on the Arun Local Plan Proposals Map) and that any disturbance to habitats of the adjoining development scheme will be minimised;
- (d) layout allows for road, footpath and cycle connectivity to the adjoining Land off Summer Lane site;
- (e) makes provision for a ground floor unit for a village centre use at the entrance to the site from Pagham Road and makes provision for off-street public car parking as part of the village centre.

iii. provision is made by one or both the allocated sites in this comprehensive scheme for a total of at least 30 extra care dwellings to be restricted to occupation by older households.

iv. planning applications must include a flood risk assessment to demonstrate how a scheme will not increase pluvial or fluvial flood risk on any adjoining land, to the satisfaction of the local planning authority and the Environment Agency.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the 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."

The proposal is considered to comply with relevant Development Plan policies in that it would have no materially adverse effect on the visual amenities of the locality or the residential amenities of the adjoining properties, nor would it have an adverse impact upon the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

PROPOSAL & PRINCIPLE:

This application seeks to amend a previous planning permission as granted in June 2016 by proposing to capture those reptiles existing on the site and move them to a nearby wildlife reserve. This will allow the developers to commence works on the site sooner as they would otherwise have had to wait until the on-site wildlife buffer had matured (approx. 1 year) before the on-site reptiles could be moved into the buffer area.

The principle of residential development on this site has already been established by the previous decision and it is only necessary on this application to consider the proposed translocation of the reptiles from the site to the off-site receptor location. It should also be noted that there are no plans to remove the proposed wildlife buffer. This will still be subject to enhancement with the hope that it will be recolonised in the future by reptile species living in surrounding areas.

REPTILE TRANSLOCATION:

There is no specific policy within the development plan in respect of the translocation of wildlife species. Arun Local Plan policy GEN29 has regard to the incorporation of wildlife habitats into development schemes. This has already been proposed by application P/125/14/PL and there are no plans to change this. Emerging Local Plan policy ENV DM5 also advises of the need to protect existing habitats on site and further states that developments shall have regard to Natural England's standing advice for protected species.

Draft Pagham Neighbourhood Plan policy 2 requires that this site retains locally valued & important habitats, including wildlife corridors & stepping stones and that these are incorporated into the public open space. This was proposed by application P/125/14/P? and there are no plans to change the areas of retained habitat (i.e. the wildlife buffer). Policy 2 also states that any disturbance to habitats of the adjoining development scheme be minimised. It is not considered that the translocation of reptiles from this site will disturb those habitats within the adjoining site (Land at Summer Lane). However, it should be noted that the Pagham Neighbourhood Plan has not yet been made and therefore attracts only limited weight in this determination.

In the absence of relevant planning policies, it is considered that regard should be had to Natural England's Standing Advice and to the guidance of the Council's technical experts (Chichester DC Ecology). The Standing Advice was assessed in the "Officer's Comments on Reps" section of this report and it was considered that the proposed translocation would accord with the Standing Advice.

Furthermore, Chichester DC Ecology have considered the application and following confirmation of the retention of the wildlife buffer, they raise no objections. They consider that the wildlife buffer can be made suitable to attract new reptile species in the future. They also do not feel that any proposal to bring the reptiles back to the site from the receptor site (Brooks Meadow) would be in their best interests.

SUMMARY:

The advice of the Council's technical experts on ecology matters, Chichester DC Ecology, is compelling in demonstrating that the proposed translocation of reptile species to the off site receptor location is acceptable. Furthermore, with the proposed enhancement measures to the wildlife buffer area on the site, reptiles should in future recolonize the Pagham Road site. On this basis it is recommended that conditions 28 and 29 are varied by replacing them with the new conditions 1 and 2 as shown below. It would be very difficult to defend a decision to refuse against the evidence submitted by the ecology experts.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that

may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 The development must be carried out in accordance with the reptile mitigation and enhancement measures as set out in section 6.3 of the Ecosupport "Phase I & II Ecological Surveys" (Rev 10/6/15) as submitted with application P/125/14/PL except in respect of the "Reptile Mitigation Addendum" dated April 2017 as submitted with application P/48/17/PL regarding the translocation of reptile species to an off-site receptor site. Any proposed on-site enhancements shall be implemented in accordance with these documents and thereafter permanently retained and maintained.

Reason: In accordance with Arun District Local Plan policy GEN29 and the National Planning Policy Framework.

- 2 Prior to development or any preparatory works commencing the reptile population shall be translocated to an off-site receptor location in accordance with the submitted "Reptile Mitigation Addendum" dated April 2017.

Reason: To safeguard resident reptile species in accordance with Policy GEN29 of the Arun District Local Plan and the National Planning Policy Framework. This is required to be a pre-commencement condition because otherwise the resident reptile species could be harmed.

- 3 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning

Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

- 4 INFORMATIVE: All of the conditions imposed on P/125/14/PL shall remain in force except for conditions 28 & 29 which are replaced by new conditions 1 and 2 above.