



11 February 2021

Our Ref: OJ/16.154

Neil Crowther Esq
Arun District Council
Civic Offices
Maltravers Rd
Littlehampton
West Sussex
BN17 5LF

Application P/4/21 Material change of use of land from agricultural use to use for open space.

I am writing on behalf of my client, Hallam Land Management Limited, who have a legal interest in land that is subject to Application P/4/21, and Bellway Homes, who are Hallam's delivery partner for planning permission P/30/19/OUT. This seeks planning permission for a material change of use of land from agricultural use to use for open space.

The Applicant acknowledges that the application site is, in part, "agricultural land", and that for the Site to be "open space" it would constitute a material change in its use. It follows that the Applicant does not see the use of the land as "open space" as an immaterial change. The Applicant is therefore proposing that the Site is used in a new and different way from its current use.

This is explained in the applicant's Supporting Statement in the following terms:

Planning permission is sought for the use of the land for the purposes of public recreation. Such recreational land use could (if granted and implemented) incorporate new swales and ditches (including improvements to the existing) associated with a Sustainable Urban Drainage system for this part of Pagham as well as new allotments without the need for further planning permissions. (emphasis added)

Later the Supporting Statement refers to the land being used as Alternative Natural Green Space required to offset recreational disturbance on Pagham Harbour.

Plainly the Applicant intends for there to be public access to the land and for there to be engineering works that change the character and appearance of the land as well as its use. Such engineering works may require planning permission and / or land drainage consent.

It is a basic principle that a planning permission relates to the land concerned and runs with the land. Absent any control over land that is subject to either a planning application or thereafter a permission,

an applicant is not able to implement the said permission. It is material therefore to consider whether there is any prospect of a planning permission for "open space" being implemented.

In this instance, the Applicant is a private individual who has no legal interest in the land covered by the application. Accordingly, the Applicant has no means to secure the material change of use of the land for which permission is sought i.e. the Applicant cannot bring about the use of the Site in a new and different way.

The private individual has no means to enforce the cessation of the agricultural activity that would be required to implement that change of use. Similarly, the private individual has no means to undertake any soft or hard landscaping or engineering works necessary for the land to be used for the purposes of open space and public recreation. The private individual has no means of granting public access to the land such that it could serve any practical open space purpose in these terms.

The private individual refers to implementation and delivery of this recreational land being achieved via Section 106 Agreements – neither the private individual nor the local planning authority can oblige the landowner to enter in to such an agreement.

The private individual is aware from his involvement in matters associated with the application site historically, that the application site is part of the North Pagham Strategic Site allocated for development to meet the District's housing need in the adopted Local Plan.

The private individual has not put forward any justification as to why the Local Planning Authority should grant planning permission for the change of use sought in the context of development plan i.e. what material consideration is there that warrants a decision other than in accordance with the development plan that intends the site to be developed for housing and associated uses.

The Applicant acknowledges that the application would be in conflict with Policies H SP2 and SP2a. He then goes on to assert that these Policies are out of date but offers no reasoned justification for this opinion. In any event it is for the decision maker to determine weight to be given to development plan policies and, in this regard, the recent decision of the Court of Appeal in *Gladman Development Limited v Secretary of State for Housing Communities and Local Government and Corby Borough Council and Uttlesford District Council* 2020 EWHC 518 Admin, (which is aligned with the earlier Supreme Court judgement in *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP and Cheshire East Borough Council* 2017 UKSC 37), directs that, in applying the presumption in favour of sustainable development in Government Policy, the development plan is the starting point in the decision-making process such is the statutory pre-eminence of Section 38(6). Policies H SP2 and SP2a are not simply disapplied, as is the Applicant's contention.

Moreover, land within the application site benefits from outline planning permission granted in September 2019, pursuant to the development plan. No statutory challenge was brought to the grant of this planning permission and it remains a lawful planning permission. You will be aware that certain of the outline planning permission's conditions have been discharged and that a reserved matters application has been submitted pursuant to condition 1 of the outline planning permission.

This is demonstrable evidence of the intention to develop the site in accordance with the development plan and the extant planning permission, which is material to the question of whether there is any prospect of the landowner permitting the alternative use. Plainly in these circumstances, there is not.



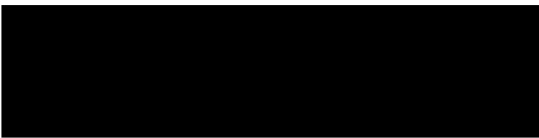
Lastly, the private individual will be aware from his previous involvement, and indeed from the declaration that the land registry has been viewed, who certain of the landowners are, and that a substantial part of the application site is subject to a charge in favour of Hallam Land Management Limited. No attempt has been made to engage with this landowner or their representative in respect of this proposed change of use.

I am left with no other conclusion than the application serves no meaningful purpose and it is entirely without merit. There is simply no reasoned justification for granting planning permission for the change of use that is sought, and moreover, the applicant has no means of implementing that change of use. For the avoidance of doubt, there is no prospect of the landowners that I represent making its land available for the use that the planning application seeks.

This appears to be another attempt to frustrate the legitimate development intentions of the landowners, which, as you will be aware, are in accordance with the development plan, and from which a significant public benefit accrues.

I trust you will consider these representations in determining application P/4/21.

Your faithfully,

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Owen Jones
Director

