

[REDACTED]

From: paul collins [REDACTED]
Sent: 09 July 2020 15:52

[REDACTED]

Subject: RE: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL, P/62/20 DOC, P/52/19/PO,- Land To North And South Of Summer Lane Pagham PO21 4NG

Mr Davis

Please see the e mail trail below and the attached publically available Land registry documents.

According to Land Registry Title WSX408494 Arun District Council is a registered lender to the current applicants in respect of their purchase of land which is subject to Council ref: P/58/15 OUT and the associated conditions and s106 Agreements and those applications cited and also holds proprietor discretion over the applicants right to dispose of such land (Clause 5) and therefore has a financial interest in the development and disposal of this site.

Therefore in addition to the queries I raise below are you also able to explain the Council's registered financial interest in the site and the degree to which such interest does or does not fetter ADC decision making regarding applications made by the current applicant to develop the site.

As you are aware the existence of such a financial interest can be a material consideration in the determination of applications and the public and Pagham Parish Council will wish to be reassured that ADC decisions regarding the number of dwellings to be built, the layout of the site, the landscaping of the site and the quantum and location of POS and amenity space as well as the location of the SUDS Drainage scheme on this site and any others are being and will be made on planning ground's unfettered by any such financial interest that ADC has in the site or part thereof.

To be clear I do not suggest that there is no satisfactory explanation or that one cannot be provided by reference to any pre-existing report and/or Officer/member decision but only that providing such explanation and identifying any relevant reports or decisions would avoid any unfortunate public misconceptions and be in the interests of openness and transparency.

As you make clear in your e mail below Officers do not normally acknowledge or reply to e mails but can I suggest that you do reply to this e mail and the ones below so that I may include reference to same in my report to PPCPC at its public meeting on 14 July 2020 .

In the meantime please place this e mail and the attachments on the files cited above.

Thanks

Paul Collins BA (Hons) DipTP

From: paul collins

Sent: Wednesday, July 8, 2020 5:24 PM

Subject: FW: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL, P/62/20 DOC - Land To North And South Of Summer Lane Pagham PO21 4NG

Mr Davis

Please could you confirm whether or not Pagham Parish Council will be consulted on P/62/20 DOC received 3/7/20.

PPC has a Planning Committee on 14 July 2020 and I had hoped to be in a position to report the outcomes from my e mail enquiries below so please could you confirm whether or not you will be replying before then.

In the meantime please see the attached factual notes (based on an admittedly cursory perusal of the current application)for you to think about.

Paul Collins BA (Hons) DipTP

From: paul collins

Sent: Thursday, July 2, 2020 2:57 PM

To: 'Simon Davis' <Simon.Davis@arun.gov.uk>

Cc: 'Daniel Vick' <Daniel.Vick@arun.gov.uk>; 'Nicola Swann'

Subject: RE: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL - Land To North And South Of Summer Lane Pagham PO21 4NG

Mr Davis

Thanks for your response.

When you seek the legal clarification on the S73 point please note that I am aware of and have read the recent case law on this point which suggests that whilst a reserved matters approval is not a planning permission it and its conditions are an intrinsic part of the permission so that they may be varied under S73. But the problem here is that the reserved matters application was itself approved ultra vires because it not only effectively changed the approval granted under P/58/15 OUT (different plans etc) but also imposed conditions relating to matters (including working hours) which were not imposed on the OPP granted so that the ability to lawfully implement same is at best in doubt.

Anyway I will be interested to see the legal opinion when received and perhaps you will share this with me and the Parish Council so that they can then take a view about whether or not they agree with same and/or wish to seek their own legal opinion on the point.

Notwithstanding I remain of the view that the negotiated solution I suggest not only remains the most pragmatic and quickest route to a satisfactory win win outcome for all and an improved development but would also be one step on the right and badly needed path towards restoring some of the trust that has unfortunately been lost

between ADC Planning Officers and PPC and the community they represent that is the foundation of proper planning in any area. I therefore commend it to you.

Thanks

Paul Collins BA (Hons) DipTP

From: Simon Davis [<mailto:Simon.Davis@arun.gov.uk>]

Sent: Thursday, July 2, 2020 1:27 PM

To: paul collins [REDACTED]

Subject: RE: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL - Land To North And South Of Summer Lane Pagham PO21 4NG

Dear Mr Collins,

We do not acknowledge emails received (although any that are sent to planning@arun.gov.uk, do receive a standard acknowledgement). However, I do intend to reply to your email of 24th June, and should be able to do so next week. I am also seeking Legal clarification re your point about the S.73.

Lastly, please note that Daniel Vick is the west Team Leader, Juan Baeza covers the east area of the district.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

T: 01903 737874

E: simon.davis@arun.gov.uk

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From: paul collins [REDACTED]

Sent: 02 July 2020 13:05

Subject: RE: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL - Land To North And South Of Summer Lane Pagham PO21 4NG

Mr Davis

Further to my last below (to which I have received no acknowledgement and have learned to accept that I will receive no reply) I have now had the opportunity to consider the application made under P/42/20 PL in more detail

and find that it only serves to demonstrate the legal failings with the permissions relating to this site that I have been trying to raise and address with you as the case officer for the last 12 months or more.

The description of the application reads as follows:

Variation of condition 13 imposed under P/70/19/RES relating to temporary relaxation of planning hours from approved Monday to Friday 8AM-6PM & Saturday 8AM-1PM to Monday to Thursday 8AM-9PM, Friday 8AM-6PM (no change) & Saturday 8AM-4PM until 13th May 2021.

And purports to be made under S73 of the Act and therefore should be determined by reference to the relevant PPG at Paragraph: 031 Reference ID: 21a-031-20180615 Revision date: 15 06 2018 and that at ID: 17a-013-20140306 but this is not lawfully possible in this case for the following reasons:

The permission granted under council reference P/70/20 RES is not in law a planning permission so that it is not possible in law to make an application under S73 of the Act to vary a condition imposed on a reserved matters consent because S73 by definition only relates to the varying of conditions imposed on planning permissions.

As a matter of law the only planning permission that relates to this site is in fact the outline planning permission granted under council reference P/58/15 OUT and there is no condition on that permission relating to or restricting working hours to vary.

Therefore Arun District council may not consider or determine the application submitted under ref P/42/20 PL as to do so would be ultra vires. (i.e acting or done beyond one's legal power or authority).

Given that the developer in this case is finding it difficult to demonstrate the lawful implementation of the OPP (i.e refusals of applications made to discharge conditions) the fact that there are objections from Pagham Parish Council and residents relating to the change in working hours proposed and the application has to be determined by Committee (see e mails on file). the foregoing and the issues I raise in my e mail below, can I suggest that the most appropriate course of action (for ADC, the developer, Pagham Parish Council and local residents) would be to return the application made undetermined with the invitation that the developer abandons their efforts to implement OPP P/58/15 OUT and submit instead an application for full planning permission for the site so that all the issues that currently prevent the developer from lawfully implementing the OPP granted can be properly considered and resolved. In this regard I refer you to the PPG at ID: 17a-001-20140306 Flexible options.

I hope you find this a helpful suggestion because, as you know, Pagham Parish Council supports the development of this site with housing subject to that development demonstrating that it can be lawfully undertaken in compliance with relevant adopted development plan DM policies and those in the emerging Pagham Neighbourhood Plan 2020 – 2030 now being consulted upon under REG 14 and nothing that has been submitted to date by the developer does so. I also think that such an approach would avoid the need for the DCC having to waste its time considering and debating all these issues and problems and the part that Officers have played in creating them as I am sure that they have more pressing matters to consider.

Anyway I will leave it with you and perhaps you can think about it, discuss it with your colleagues and then let Pagham Parish Council know what you have decided you want to do as requested in my e mail below.

I have not copied this e mail to Mr Crowther as he has decided to delete any e mail he receives from me unread and I would not want to waste his valuable time any more than I have to when trying to discharge my responsibilities to PPC so I will leave it to you to decide whether or not he can assist with your deliberations but in the meantime please place this e mail on all the files

Thanks

Paul Collins BA (Hons) DipTP

From: paul collins [REDACTED]
Sent: Saturday, June 27, 2020 3:53 PM

Subject: P/58/15 OUT, P/70/19/RES, P/23/20/DOC, P/37/20/DOC, P/35/20/DOC, P/38/20/DOC, P/46/20/PL - Land To North And South Of Summer Lane Pagham PO21 4NG

Mr Davis et al

As Pagham Parish Councils retained Independent Planning Consultant I have been asked to advise the Parish Council as to whether or not this site benefits from an outline planning permission that can be lawfully implemented and if so whether or not works have lawfully commenced on the site pursuant to that OPP and if so whether or not such works are or are not being undertaken in breach of or in compliance with the relevant conditions on that OPP and its related S106 Agreement (s).

I have reviewed the files and the attached e mail exchange filed on P/58/15 OUT which suggests that this OPP was granted without due regard to those drawings to which it relates being on the file for comment or consideration and note that some of these appear to have been superseded by plans and conditions approved under P/70/19 RES in any case. I also note the refusals issued on Friday 26 June 2020 and the fact that P/48/20 PL remains undetermined at this date but frankly despite my 40 years' experience as a qualified planner and the detailed knowledge that I have acquired of relevant legislation and case law over that time frame, I have no idea what the position is on all counts and doubt that you or any other officer at ADC does either.

If I am wrong in this regard and you do know please can I respectfully ask that you provide Pagham Parish Council with a written explanation as to what it is you think you are doing and what is happening in these regards as it is relevant to the ongoing work relating to the production of their Neighbourhood Plan which currently assumes that this site will be lawfully developed with 90 dwellings during the plan period (2020 – 2030) and they and I (and in due course the Examiner of the Plan) will need to know that this assumption is correct and I am sure that local residents would also find such information helpful. Equally if you, like me, do not know then please also confirm this in writing to Pagham Parish Council so that they may then properly consider the matter further.

Thanks
Paul Collins BA (Hons) DipTP

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