

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: P/69/21/CLP

LOCATION: Land To North And South Of
Summer Lane
Pagham
PO21 4NG

PROPOSAL: Lawful development certificate to construct a temporary access haul road across land attributed to public open space, from Pagham Road, via the Pagham United Reform Church car park. Access via the car park into the field will be created.

DESCRIPTION OF APPLICATION

It is proposed to provide a 7m wide temporary access road for construction vehicles on land between Pagham Road (via the United Reform Church car park) and Summer Lane. The road will cross the part of the site permitted by P/58/15/OUT & P/70/19/RES) as being for public open space. The route of the temporary haul road is shown on the Temporary haul road plan (DSH-0201-301-P1). As per the email dated 19/05/21, it is stated to be tarmac, allows for two-way traffic, will be 5m from the nearest residential dwellings and will be required for a 12 month period.

RELEVANT SITE HISTORY

P/70/21/DOC Approval of details reserved by condition imposed under ref P/58/15/OUT relating to Condition No 16 - Construction Management Plan.

P/23/20/DOC Approval of details reserved by condition imposed under ref P/58/15/OUT relating to Condition Nos 8 - ecological, 16 - Construction Management Plan, 17 - archaeological, 21 - Public Open Space, 22 - broadband strategy and 23 renewable and low carbon energy DOC Approved 29-05-20

P/70/19/RES Approval of reserved matters following outline consent P/58/15/OUT for 90 No. dwellings. Also seeking to address the terms of planning conditions 6 (Phasing), 8 (ecology), 9 (Surface Water), 12 (Vehicular Access), 15 (Parking), 18 (Travel Plan), 20 (Landscape Management), 24 (Parking Control), 25 (Dwelling Parking) and 26 (Materials). ApproveConditionally 28-02-20

P/58/15/OUT

Outline application with some matters reserved for the erection of 90 No. dwellings with associated access & open space. This is a Departure from the Development Plan.

App Cond with S106
30-09-16

REPRESENTATIONS

Representations Received:

Pagham Parish Council

CONSULTATIONS

Consultations Responses Received:

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

In this instance the proposed works will be assessed against Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This pertains to the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

Provided the works satisfy the relevant criteria and other requirements of the General Permitted Development Order (abbreviated to GPDO) and no restrictive conditions to development have been imposed on, the works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required.

CONCLUSION

Following the receipt of further information comprising the temporary haul road plan together with the information in the email dated 19/05/21, there is sufficient information to identify where the road will be located and what its use and characteristics will be.

Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted

Development)(England) Order 2015 (as amended) states:

"Permitted development-

A. The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

Development not permitted-

A.1 Development is not permitted by Class A if

- (a) the operations referred to are mining operations, or
- (b) planning permission is required for those operations but is not granted or deemed to be granted.

Conditions-

A.2 Development is permitted by Class A subject to the conditions that, when the operations have been carried out

- (a) any building, structure, works, plant or machinery permitted by Class A is removed, and
- (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, reinstated to its condition before that development was carried out."

Part 4, Class A allows "works" required temporarily in connection with and for the duration of operations. It is submitted that a temporary roadway, required to get building materials onto a site, would meet the definition of works and thus is in accordance with the permitted development rights.

There is no interpretation of 'land' or 'adjoining land' in Class A. Article 2 of the GPDO provides an interpretation which defines "adjoining owner or occupier" as any owner or occupier of any premises or land adjoining the site.

It is submitted that adjoining land must mean land adjoining the site. The temporary road is required to serve a construction site and for works on Summer Lane. Summer Lane is adjacent to the land on which the haul road will be located but it is clear that the same land is part of the larger red edged development area permitted by the planning approvals.

It is relevant to consider any relevant parts of Article 3 of the GPDO.

Article 3(4) states: "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order."

The outline and reserved matters decisions contains a number of relevant conditions - 12 & 13 (both from P/58/15/OUT), 14 (from P/70/19/RES) and 16 (from P/58/15/OUT). Conditions 12 & 13 control the means of access to the site and did not reserve any matters for later approval. Condition 14 meanwhile removed permitted development rights for hardstanding other than that shown on the approved plans. Condition 16 required the approval of a Construction Management Plan (CMP).

Conditions 12 and 13 define the access to the site as being from Pagham Road via Summer Lane and so do not permit alternative access via the area of open space. Whilst it was the intention of condition 14 to only remove permitted development rights for hardstanding on curtilage land forward of the principal or

side elevations of the dwellings, there was no reference to curtilage in the condition. Therefore, it applies to all land in the application red edge that is to the front or side of any of the dwellings - and as a result removes permitted development rights for hardstanding in the area of open space to the south of Summer Lane.

In respect of condition 16, a CMP was approved by P/23/20/DOC but this does not refer to the temporary access road. It is a requirement of s192(2) of the Town and Country Planning Act 1990 (as amended) that the works are lawful at the time of the application (28/04/21). Although the applicant has submitted an application to revise the CMP (ref P/70/21/DOC), any approval of this would not be before the submission date of this application therefore, the proposed lawful development conflicts with condition 16.

The proposed temporary road conflicts with conditions 12, 13 and 16 of the outline and condition 14 of the reserved matter approval contrary to the provisions set by Article 3(4) of the GPDO.

Notwithstanding the above, it is relevant to consider article 3(6) which states: "The permission granted by Schedule 2 does not, except in relation to development permitted by Classes A, B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons."

At one end of the haul road is Summer Lane which is part un-adopted (class P) and part adopted but class D (with the split occurring where the temporary road will join). For the purposes of the GPDO, classified roads are those in the A, B or C classes (so exclude D and anything beyond). At the other end, the road will meet the car park of the Church, therefore, there is no modification of any means of access onto Pagham Road itself (class C). Should any obstruction occur, then it will solely be within the car park which is private land. Therefore, article 3(6) does not apply.

RECOMMENDATION

PP REQUIRED

The Arun District Council hereby certify that on 05/05/21 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in black on the plan attached to this certificate, would not have been lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the following reasons:

The proposed temporary haul road does not accord with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), in particular Article 3(4) which states that nothing in the Order shall permit development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.

FIRST SCHEDULE

The route of the temporary haul road is shown on the Temporary haul road plan DSH-0201-301-P1 and as per the application description and subsequent email dated 19/05/21 is stated to be tarmac, 7m wide thus allowing for two-way traffic, sited at least 5m from the nearest residential dwellings and required for a 12 month period.

SECOND SCHEDULE

Land South of Summer Lane, Pagham, West Sussex, PO21 4NG.

EXTENT OF USE

The construction of a temporary haul road across land permitted as public open space from Pagham Road, via the Pagham United Reform Church car park to Summer Lane.

