

[REDACTED]

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**From:** paul collins [REDACTED]  
**Sent:** 25 January 2019 11:50  
**To:** Neil Crowther  
**Cc:** Karl Roberts; David Easton; Planning.Responses; Cllr. Dawn Hall; Cllr. Ashvin Patel; Cllr. Phil Hitchins; Cllr. John Charles; Cllr. Gillian Brown; Cllr. Richard Bower  
**Subject:** FW: P/134/16 OUT - Land North of Sefter Road & 80 Rose Green Road Pagham/Aldwick & P/6/17 OUT

Mr Crowther

Given the decision made by your DCC and now issued in respect of P/6/17 OUT and the correspondence below, Pagham Parish Council has been advised that application P/134/16 OUT must now be returned to the DCC for reconsideration before any S106 is signed or a decision issued if ADC is to avoid unnecessary exposure to the risk of further action by way of JR.

I assume that you can no longer disagree with that advice so Pagham Parish Council would be grateful if you could now confirm whether or not you intend to take the application back to Committee for reconsideration prior to signing the S106 or issuing a decision and if so to which Committee as previously requested.

Thanks

Paul Collins BA (Hons) DipTP MRTPI



**RTPI**

Chartered Town Planner

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**From:** paul collins [REDACTED]  
**Sent:** Thursday, January 17, 2019 1:49 PM  
**To:** 'Neil Crowther' <Neil.Crowther@arun.gov.uk>

[REDACTED]

**Subject:** RE: P/134/16 OUT - Land North of Sefter Road & 80 Rose Green Road Pagham/Aldwick

Dear Mr Crowther

Thank you for your e mail.

However, your response leaves me unable to provide my client Pagham Parish Council with the advice to which they are entitled as a statutory Consultee on this application.

As you are aware the only two matters which are before the Council for determination in this case are the principle of developing the site with the development proposed and the access to same (as defined by Article 2 of The Town and Country Planning (Development Management Procedure) (England) Order 2015). You are also aware that I and others have brought the following general/specific matters (which must rationally be regarded as material considerations for the purposes of section 70(2)) in respect of both matters to your attention since 13 November 2018:

#### General

- The degree to which relevant development plan policies can be considered up to date in the light of:
  - The NPPF 2018
  - Arun District Council's Up to date annual statement of its 5 year land supply position
  - The publication of the HELAA 2018
- The degree to which these proposals and any decisions regarding same should be considered premature given the:
  - The ADC commitment to produce the NSSA DPD and the Councils emerging approach to same
  - The ADC commitment to produce CIL and the current consultation regarding the Preliminary Charging Schedule for same
  - The recent publication of Inspector's Report on Chichester District Council Site Allocation DPD
  - The publication of the Chichester District Council HELAA 2018 and its contents
  - The current Chichester Local Plan Review Preferred Approach 2016-2035 Consultation and ADC's response to same given the proposed allocations at North Mundham and other proposals for key A27 junctions that replace those previously identified in the 2015 Local Plan it contains

#### Specific

- The fact that the Arun Transport Review and Transport Studies are not up to date given the foregoing
- The fact that the applicants cumulative Transport Assessment submitted and the "Sensitivity" testing undertaken by ADC are out of date because they do not take any of the foregoing matters into account
- The fact that the positions of Highways England, Chichester District Council and West Sussex County Council regarding the provision of related Education and Transport infrastructure are ever changing and those previously reported are not up to date (For example: West Sussex County Council has recently stated that as a matter of policy it no longer intends to build new schools and will encourage the establishment of Free Schools to meet educational needs and Highways England and the LHA have yet to consider any of the foregoing)
- The claim for Judicial Review in respect of the decision issued in respect of P/140/16 OUT and the fact that the grounds for that claim are equally applicable to this application and the way in which the officers report addresses same.
- The position reached with regard to the consideration of P/6/17 OUT

I appreciate that the timing of such material considerations arising is both unfortunate and no doubt inconvenient but they are nonetheless material considerations that should be properly considered by your authority before any S106 Agreement is signed and a decision issued under your delegated authority in this case and the DCC has not had the opportunity to do so .

I acknowledge that the law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given so that it is for the decision maker to decide what weight is to be given to the material considerations in each case (.PPG Paragraph: 009 Reference ID: 21b-009-20140306) but I am also sure that you will appreciate that your authority cannot fulfil their statutory duty to have regard to all material considerations unless/until Officers properly identify those material considerations and present members with the opportunity to consider them and your advice as to the weight that they might attach to them.

In the light of this e mail exchange please can you confirm whether or not you intend to take the application back to Committee for reconsideration prior to signing the S106 or issuing a decision and if so to which Committee so that I can provide my client Pagham Parish Council with the advice to which they are entitled as a statutory Consultee on this application.

Thanks

Paul Collins BA (Hons) DipTP MRTPI



**RTPI**

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**From:** Neil Crowther [mailto:Neil.Crowther@arun.gov.uk]

**Sent:** Wednesday, January 16, 2019 2:49 PM

**To:** 'paul collins' [REDACTED]

**Subject:** FW: P/134/16 OUT - Land North of Sefter Road & 80 Rose Green Road Pagham/Aldwick

Mr Collins,

When the decision is ready to be issued with a completed s106, I will take a view at that time on whether the committee need to be updated on any possible material changes in circumstances before a decision is issued.

Regards, Neil

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Neil Crowther | Group Head of Planning, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

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Visit Arun's web site at [www.arun.gov.uk](http://www.arun.gov.uk)



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**From:** paul collins [REDACTED]

**Sent:** 08 January 2019 11:42

**To:** Karl Roberts <[Karl.Roberts@arun.gov.uk](mailto:Karl.Roberts@arun.gov.uk)>; Neil Crowther <[Neil.Crowther@arun.gov.uk](mailto:Neil.Crowther@arun.gov.uk)>; David Easton <[David.Easton@arun.gov.uk](mailto:David.Easton@arun.gov.uk)>

[REDACTED]

**Subject:** P/134/16 OUT - Land North of Sefter Road & 80 Rose Green Road Pagham/Aldwick

Dear All

As you are aware this application was considered at the reconvened meeting of the Special Development Control Committee on 13 November 2018 and the Committee resolved to approve the application conditionally subject to the completion of a S106 Agreement with authority being delegated to the Group Head of Planning, in consultation with the Chairman and Vice-Chairman, to allow for minor amendments to be made to the S106 Heads of Terms.

However it is noted that the S106 Agreement has not yet been completed and the decision has not yet been issued.

Pagham Parish Council and others have made representations (recorded on the file) since 13 November 2018 which have brought to the attention of Officers a number of material considerations relevant to the question as to whether the application should be granted or refused since the Committee considered the application and passed its resolution and have requested that the application be returned to the Committee for determination in the light of those material considerations but thus far Officers have declined to confirm that they will do so.

In **R (Kides) v South Cambridgeshire District Council [2002] EWCA Civ 1370** the Court of Appeal considered the circumstances in which after the passing of a resolution by a committee to grant planning permission it was

incumbent upon the officer to whom delegation to approve had been given to take the planning application back. Jonathan Parker LJ giving the lead judgment said:

*“121. In my judgment a consideration is “material”, in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision-maker’s scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision-making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues.*

*122. In my judgment, an authority’s duty to “have regard to” material considerations is not to be elevated into a formal requirement that in every case where a new material consideration arises after the passing of a resolution (in principle) to grant planning permission but before the issue of the decision notice there has to be a specific referral of the application back to committee. In my judgment the duty is discharged if, as at the date at which the decision notice is issued, the authority has considered all material considerations affecting the application, and has done so with the application in mind – albeit that the application was not specifically placed before it for reconsideration.*

*123. The matter cannot be left there, however, since it is necessary to consider what is the position where a material consideration arises for the first time immediately before the delegated officer signs the decision notice.*

*124. At one extreme, it cannot be a sensible interpretation of section 70(2) to conclude that an authority is in breach of duty in failing to have regard to a material consideration the existence of which it (or its officers) did not discover or anticipate, and could not reasonably have discovered or anticipated, prior to the issue of the decision notice. So there has to be some practical flexibility in excluding from the duty material considerations to which the authority did not and could not have regard prior to the issue of the decision notice.*

*125. On the other hand, where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, section 70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore, the authority of the delegated officer must be such as to require him to refer the matter back to committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.*

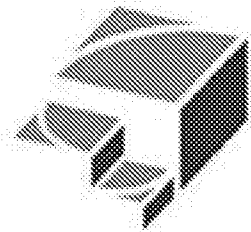
*126. In practical terms, therefore, where since the passing of the resolution some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a “material consideration” for the purposes of section 70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision.”*

It is my professional view that in the light of this judgement and the circumstances of this application, the Group Head of Planning cannot be satisfied (a) that the authority is aware of the new material considerations brought to his attention in representations, (b) that it has considered the application with those material considerations in mind or that on a reconsideration the authority would reach (not might reach) the same decision regarding the application and that the officer must, therefore, be required to refer the matter back to committee for reconsideration in the light of the new material considerations highlighted as if he fails to do so before issuing the decision (with or without Chairman/Vice Chairman approval) , the authority will be in breach of its statutory duty.

**Please can you acknowledge receipt of this e mail and confirm whether or not the Group Head of Planning does intend to take the application back to Committee for reconsideration prior to issuing a decision and if so to which Committee.**

Thank you

**Paul Collins BA (Hons) DipTP MRTPI**



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