

From: Amanda Scholes on behalf of Planning.Responses
Sent: 09 February 2021 11:17
To: Planning Scanning
Subject: FW: P/97/20PL & P/4/21PL Summer Lane Pagham
Attachments: report independent.pdf

2 x applications.

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From: paul collins [REDACTED]
Sent: 08 February 2021 14:09
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Cc: Cllr. James Walsh [REDACTED]; Cllr. Martin Lury [REDACTED]; Cllr. Jamie [REDACTED]; Cllr. Mike Northeast [REDACTED]; Cllr. June Hamilton [REDACTED]; Cllr. David Huntley [REDACTED]; Cllr. Isabel Thurston [REDACTED]; Cllr. Billy Blanchard-Cooper [REDACTED]; Cllr. Richard Bower [REDACTED]; Cllr. John Charles [REDACTED]; Cllr. Hugh Coster [REDACTED]; Cllr. Paul Kelly [REDACTED]; Cllr. David Edwards [REDACTED]; Cllr. Jacky Pendleton [REDACTED]; Cllr. Will Tilbrook [REDACTED]; Cllr. Jeanette Warr [REDACTED]; Cllr. Gill Yeates [REDACTED]
Subject: P/97/20PL & P/4/21PL Summer Lane Pagham

Simon

I understand that you are currently preparing a report re P/97/20 PL for the DCC meeting on 3 March 2020.

Therefore I attach my final representations in respect of P/97/20PL and P/4/21PL in the form of a report so that you may consider same. In order that these representations are properly reported to the DCC at its meeting on 3 March 2020 please can I suggest that you append same to any Officer report you are preparing in respect of P/97/20 PL and P/4/21PL and include an officer response in your report as you see fit.

I have copied this e mail and the report to the members of the Committee listed for their information only as I fully understand that they cannot and should not comment in advance of the DCC Meeting but there is of course nothing in the rules to say that they cannot receive representations in advance of meeting so as to ensure that are able to properly consider same as part of their decision making at the Committee.

I have also asked that Pagham Parish Council formally consider same in advance of the DCC meeting and either endorse same or otherwise as they see fit so that the DCC may be in receipt of their formal views when they make the decision on 3 March 2021. Finally I have also copied this e mail and report to my client residents in Summer Lane so that they and others can also write to you independently before the meeting so that the DCC can be appraised of their views also.

Obviously, in the event that Officers faced with the evidence provided and after due discussion with the applicant, do choose to change their approach to the matters raised in advance of the meeting perhaps you could let me know so that I can pass this on to my client residents.

Thank you

Paul Collins BA (Hons) DipTP



INDEPENDENT PLANNING APPLICATION REPORT – P/97/20 PL – 8 February 2021

The Application

The application is described by the applicant on the submitted forms as being a Full Planning application for the erection of 36 dwellings so that it is independent from and is unable to rely on any previous permissions relating to the site (i.e P/58/15 OUT or its reserved matters approval under P/70/19 RES) and this report considers the application accordingly.

Procedural Matters

The application was submitted on 22-09-20 and when submitted the application was accompanied by a Covering letter dated 17 September 2020 which specified that the application was supported by some 45 documents and plans but by letter dated 1st October 2020 ADC declined to validate the application and requested some 12 further documents and plans that were stated to be necessary to do so.

It is unclear as to whether or not the applicant did subsequently submit the requested information in the form requested by ADC but by letter dated 14 October 2020 and the statutory 13 week time limit for determining the application was stated as being 13 January 2021.

At the date of this report the application has been under consideration by ADC for 17 weeks and having reviewed the Council's file I have found it impossible to determine with any legal certainty which of the myriad of submitted documents and plans are relied upon by the applicant as forming part of the application on which the Council may base its decision (including any conditions or S106 Agreement)

Hopefully this will be clarified in advance of the intended Development Control Committee on 3 March 2021 as if not any decision made at that Committee (refuse or approve) will be legally challengeable.

In this regard and to ensure that the Council's Development Control Committee may be in a position to make a lawful decision when asked to do so I refer the ADC Case Officer and the applicant to the relevant Planning Practice Guidance at <https://www.gov.uk/guidance/making-an-application> .

It is also the case that this proposal generates the need for an appropriate assessment to be undertaken by Arun District Council in accordance with the relevant legislation as guided by the relevant Planning Practice Guidance at PPG <https://www.gov.uk/guidance/appropriate-assessment#what-must-an-appropriate-assessment-contain> and the Information for Habitat Regulations Assessment of Updated Scheme submitted on behalf of the applicant dated 5 January 2021 does not satisfy or meet that requirement.

Once again it hoped that ADC officers will address this issue in advance of the intended Development Control Committee on 3 March 2021 as if not any decision made at that Committee (refuse or approve) will be legally challengeable.

The Application Site and Access to same

According to the applicant the application site is as shown edged red on the attached submitted location plan and includes the public footpath and Bridleway known as Summer Lane and referenced 100 which is specified as being the only access for the development proposed with the site edged red stopping short of the Adopted highway at Summer Lane which stops where shown.

The Applicant claims that they own all the land edged red (including Footpath/Bridleway 100) but this is disputed by residents who have evidence which demonstrates that the applicant does not own a freehold interest in that land as claimed .

Furthermore, under s34 (1) of the Road Traffic Act 1988 (as amended by the Countryside and Rights of Way Act 2000) it is a criminal offence to drive a mechanically propelled vehicle on a footpath, bridleway or restricted byway without lawful authority and the applicant has provided no evidence to demonstrate that they have the required lawful authority which enables them to rely on that Footpath/bridleway to provide vehicular access to the development proposed. In this regard it should be noted that the requirement for "lawful authority" may be satisfied by a consent from the landowners to use the footpath/bridleway for motorised traffic but only if it can also be demonstrated that such usage would not cause nuisance to other lawful users being walkers, cyclists and other non-motorised users such as people in wheelchairs and on horseback who may use the footpath/bridleway without the consent of the landowner.

The inability to provide for a lawful, safe and suitable access to a site for all users is a material consideration that can by itself result in a refusal of the development proposed.

Again, it is hoped that ADC Officers will address this issue in advance of the intended Development Control Committee on 3 March 2021 as if not any decision made at that Committee (refuse or approve) will be legally challengeable.

Conflict with Relevant and up to date Development Plan Policies

The proposals are in conflict with ALP Policy GI SP1 Green Infrastructure and development because it is a major development and it has not been demonstrated that it has been designed to protect and enhance existing Green Infrastructure assets, and the connections between them.

The proposals are in conflict with ALP Policy ECC SP1 Adapting to climate change because they fail to demonstrate that they have been designed to take account of the following issues: a. Location (in relation to flood risk and vulnerability to coastal erosion); b. Water efficiency; c. Shade, cooling, ventilation, solar gain; d. Connectivity to the green infrastructure network; e. Layout and massing; f. Resilience of buildings and building materials to extreme weather events; and g. Capacity of drainage systems and incorporation of Sustainable urban Drainage Systems (SuDS)

The proposals are in conflict with ALP Policy ECC SP2 Energy and climate change mitigation because they fail to demonstrate a. energy efficiency measures that reflect the current standards applicable b. how they Use design and layout to promote energy efficiency; c. Incorporate decentralised, renewable and low carbon energy supply systems and how 10% of the total predicted energy requirements from renewable or low carbon energy generation on site.

The proposals are in conflict with ALP Policy HWB SP1 Health & Wellbeing in that it has not been demonstrated that they have been designed so as to maximise the impact it can make to promoting healthy communities and reducing health inequalities with particular regard to a) Providing or contributing to the necessary infrastructure to encourage physical exercise and health, including accessible open space, sports and recreation facilities (including outdoor fitness equipment) and safe, well promoted, walking and cycling routes b. Creating mixed use development and multi-use community buildings that reduce the need to travel by providing housing, services and employment in close proximity to each other; and c. ensuring that arts and cultural facilities are accessible to all residents and visitors to the District.

The proposals are in conflict with ALP Policy OSR DM1 Open Space, sport & recreation in that the site is currently open space (albeit not public open space) and the proposals fail to demonstrate that this open space is surplus to the requirements for open space in Pagham, the resulting loss of the open space would be replaced by equivalent or better provision of open space and the development is not for alternative open space.

In this regard the Councils recently adopted Public Open Space, Playing Pitches and Built Facilities January 2020 SPD requires that a scheme for 36 dwellings must provide the following (in addition to those in Policy OSR DM1 Open Space, sport & recreation) on and off site contributions and this scheme does not do so and there is no land owned or controlled nearby by the applicant that can be used to meet these requirements either:

- Public open space, 2,534 sq metres
- Play space 436 sq metres
- Off-site contribution to allotments £634

And the Councils Health and Fitness calculator states that a scheme for 36 dwellings should provide an on-site contribution of 2.4 sq metres and an off-site contribution of £4,800.

The proposals are in conflict with ALP Policy T SP1 Transport and Development because the development fails to demonstrate that it will provide lawful and safe access on to the highway network; contribute to highway improvements and promotes sustainable transport, including the use of low emission fuels, public transport improvements and the cycle, pedestrian and bridleway network and would (if approved) lead to a demonstrable nuisance to other lawful users being walkers, cyclists and other non-motorised users such as people in wheelchairs and on horseback who may use the footpath/bridleway on which the proposed access relies.

The proposals conflict with ALP Policy T DM1 Sustainable Travel and Public Rights of Way because the development proposed fails to demonstrate that it can be undertaken in a way that it will ensure ease of movement, prioritising safe pedestrian and cycle access to the green infrastructure network and access to public transport and community transport services for all members of the community.

The proposals conflict with ALP Policy ENV DM2 Pagham Harbour because the site lies within ZONE B and fails to make developer contributions towards the agreed strategic approach to access management at Pagham Harbour and create easily accessible new green spaces for recreation within or adjacent to the development site (in addition to those required to serve the development itself. See above).

The proposals conflict with ALP Policy ENV DM3 Biodiversity Opportunity Areas because the site lies next to a Biodiversity Opportunity Area and the development fails to reasonably address opportunities for enhancing this area through its design, layout and landscaping or access/management and should not, therefore be permitted.

The proposals conflict with ALP Policy ENV DM5 Development and biodiversity because it fails to demonstrate that it would achieve a net gain in biodiversity and protect existing habitats and potential habitats for protected species on site and no detailed surveys for the protected species carried out at an appropriate time of year have been submitted in support of the planning application in accordance with Natural England's standing advice for protected species.

The proposals conflict with ALP Policy W DM2 Flood risk because they fail to demonstrate that the proposals can or will be undertaken in a manner that accords with all detailed requirements of that policy

The proposals conflict with ALP Policy W DM3 Sustainable Urban Drainage Systems because they fail to demonstrate that they can or will be undertaken in a manner that accords with all detailed requirements of that policy

The proposals conflict with ALP Policy WM DM1 Waste Management and Policy W23: Waste Management within Development in the WSCC Waste Local Plan 2014 (as updated) because they fail to demonstrate the volume and type of materials to be excavated as part of the development or that opportunities for the re-use and recovery of materials on site will be maximised, how off-site disposal of waste will be minimised and managed and how waste management facilities of an appropriate type and scale will form an integral part of the development .

The proposals conflict with Policy QE SP1 Quality of the environment because they fail to demonstrate how the development will contribute positively to the quality of the environment and will ensure that it does not have a significantly negative impact upon residential amenity, the natural environment or upon leisure and recreational activities enjoyed by residents and visitors to this part of Pagham.

The proposals conflict with ALP Policy INF SP1 Infrastructure provision and implementation because they fail to demonstrate how the infrastructure and services needed to support the development and meet the needs of future occupiers can and will be lawfully provided at the appropriate time.

Recommendation

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 presumption in favour of sustainable development at paragraph 11 of the NPPF 2019 is engaged in this case because this is a housing proposal and Arun District Council is unable to demonstrate a 5 year HLS but paragraph 12 of the NPPF 2019 States:

"The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed."

In this case the applicants have failed to demonstrate with evidence of sufficient quality and clarity to demonstrate how or why their development should be approved contrary to the relevant and up to date development plan policies identified and there are no material considerations in this particular case (including the Presumption in favour of sustainable development) that indicate that these up to date development plan policies should not be followed.

Therefore I recommend that this application is refused by Arun District Council at the earliest opportunity for the following reasons:

- 1. The proposals are in conflict with ALP Policy GI SP1 Green Infrastructure and development because it is a major development and it has not been demonstrated that it has been**

designed to protect and enhance existing Green Infrastructure assets, and the connections between them.

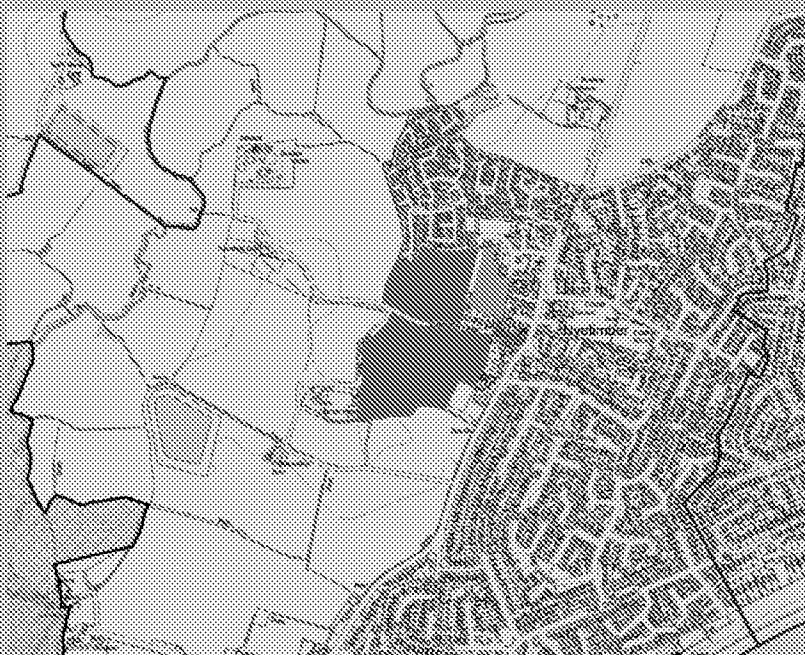
2. The proposals are in conflict with ALP Policy ECC SP1 Adapting to climate change because they fail to demonstrate that they have been designed to take account of the following issues: a. Location (in relation to flood risk and vulnerability to coastal erosion); b. Water efficiency; c. Shade, cooling, ventilation, solar gain; d. Connectivity to the green infrastructure network; e. Layout and massing; f. Resilience of buildings and building materials to extreme weather events; and g. Capacity of drainage systems and incorporation of Sustainable urban Drainage Systems (SuDS)
3. The proposals are in conflict with ALP Policy ECC SP2 Energy and climate change mitigation because they fail to demonstrate a. energy efficiency measures that reflect the current standards applicable b. how they Use design and layout to promote energy efficiency; c. Incorporate decentralised, renewable and low carbon energy supply systems and how 10% of the total predicted energy requirements from renewable or low carbon energy generation on site.
4. The proposals are in conflict with ALP Policy HWB SP1 Health & Wellbeing in that it has not been demonstrated that they have been designed so as to maximise the impact it can make to promoting healthy communities and reducing health inequalities with particular regard to a) Providing or contributing to the necessary infrastructure to encourage physical exercise and health, including accessible open space, sports and recreation facilities (including outdoor fitness equipment) and safe, well promoted, walking and cycling routes b. Creating mixed use development and multi-use community buildings that reduce the need to travel by providing housing, services and employment in close proximity to each other; and c. ensuring that arts and cultural facilities are accessible to all residents and visitors to the District.
5. The proposals are in conflict with ALP Policy OSR DM1 Open Space, sport & recreation in that the site is currently open space (albeit not public open space) and the proposals fail to demonstrate that this open space is surplus to the requirements for open space in Pagham, the resulting loss of the open space would be replaced by equivalent or better provision of open space and the development is not for alternative open space.
6. The proposals are in conflict with ALP Policy T SP1 Transport and Development because the development fails to demonstrate that it will provide lawful and safe access on to the highway network; contribute to highway improvements and promotes sustainable transport, including the use of low emission fuels, public transport improvements and the cycle, pedestrian and bridleway network and would (if approved) lead to a demonstrable nuisance to other lawful users being walkers, cyclists and other non-motorised users such as people in wheelchairs and on horseback who may use the footpath/bridleway on which the proposed access relies.
7. The proposals conflict with ALP Policy ENV DM2 Pagham Harbour because the site lies within ZONE B and fails to make developer contributions towards the agreed strategic approach to access management at Pagham Harbour and create easily accessible new

green spaces for recreation within or adjacent to the development site (in addition to those required to serve the development itself.

8. The proposals conflict with ALP Policy ENV DM3 Biodiversity Opportunity Areas because the site lies next to a Biodiversity Opportunity Area and the development fails to reasonably address opportunities for enhancing this area through its design, layout and landscaping or access/management and should not, therefore be permitted.
9. The proposals conflict with ALP Policy ENV DM5 Development and biodiversity because it fails to demonstrate that it would achieve a net gain in biodiversity and protect existing habitats and potential habitats for protected species on site and no detailed surveys for the protected species carried out at an appropriate time of year have been submitted in support of the planning application in accordance with Natural England's standing advice for protected species.
10. The proposals conflict with ALP Policy W DM2 Flood risk because they fail to demonstrate that the proposals can or will be undertaken in a manner that accords with all detailed requirements of that policy
11. The proposals conflict with ALP Policy W DM3 Sustainable Urban Drainage Systems because they fail to demonstrate that they can or will be undertaken in a manner that accords with all detailed requirements of that policy
12. The proposals conflict with ALP Policy WM DM1 Waste Management and Policy W23: Waste Management within Development in the WSCC Waste Local Plan 2014 (as updated) because they fail to demonstrate the volume and type of materials to be excavated as part of the development or that opportunities for the re-use and recovery of materials on site will be maximised, how off-site disposal of waste will be minimised and managed and how waste management facilities of an appropriate type and scale will form an integral part of the development .
13. The proposals conflict with Policy QE SP1 Quality of the environment because they fail to demonstrate how the development will contribute positively to the quality of the environment and will ensure that it does not have a significantly negative impact upon residential amenity, the natural environment or upon leisure and recreational activities enjoyed by residents and visitors to this part of Pagham.
14. The proposals conflict with ALP Policy INF SP1 Infrastructure provision and implementation because they fail to demonstrate how the infrastructure and services needed to support the development and meet the needs of future occupiers can and will be lawfully provided at the appropriate time.

An alternative plan for this part of Pagham

The attached plan sets out how this part of Pagham should be developed in accordance with the Policies listed above and in accordance with the wishes of Local Residents and Pagham Parish Council and how Arun District Council can achieve it.



● 46 Dwellings (30% affordable) with access via the adopted highway part of Summer Lane in accordance with P/58/15 OUT & P/70/19 RES

● Land set aside for ANOGS, Open space, and SUDS scheme with access for pedestrians, cycles, non motorised users and maintenance vehicles only via the existing unaltered Summer Lane Bridleway in accordance with a planning permission granted in respect of current application P/4/21

IMPLEMENTATION

1. ADC Full Council to debate and consider Revocation/modification of OPP under ref: P/25/17 OUT and P/140/16 OUT as requested in the Petition submitted to ADC signed by 2000 + signatories
2. ADC DCC to refuse planning permission in respect of P/97/20PL for the planning reasons stated in my report
3. ADC Officers to approve the application made under ADC Ref: P/4/21 under delegated powers by 9 March 2021 as there are no planning reasons not to
4. ADC Officers to enforce the conditions imposed in respect of P/58/15 OUT and P/70/19 OUT
5. ADC Officers to negotiate a new S06 Agreement either by way of a Deed of variation to the existing or by way an application made under S106A or by way of a new S106 Unilateral Undertaking which addresses the following planning obligations:
 - a. Affordable housing contribution based on 46 dwellings
 - b. ANOGS/OPEN SPACE /allotment Contributions by formula based on 46 dwellings
 - c. Pagham Harbour Contribution by formula based on 46 dwellings
 - d. Education contributions by way of formula based on 46 dwellings
 - e. Library and Fire Service contributions by way of formula based on 46 dwellings

Paul Collins BA (Hons) Dip TP 8 February 2021

