

[REDACTED]

From: Simon Davis
Sent: 16 March 2021 17:35
To: Daniel OShea [REDACTED]
[REDACTED]

Subject: RE: P/97/20 PL - Land To North Of Summer Lane Pagham PO21 4NG

Dear Daniel,

I acknowledge receipt of the email from Will Thomas. However, I have to now advise you that the current application P/97/20/PL has been subject to further review by senior colleagues and I have been instructed to refuse the application. The refusal report has been prepared and has today been agreed by Team Leaders. It is now ready to be issued so I am writing to you now as a courtesy and to ask whether you want us to refuse the application or would you rather withdraw it?

I acknowledge that I previously advised that we could support the application and that I had checked this position with my immediate Team Leader. However, I have now looked again at the submission and I agree with the concerns raised by others. The refusal reasons would be as follows:

1 The proposal is an over-intensive use of the site and an unsatisfactory form of development resulting in significant and demonstrable harm to the semi-rural character of this edge of settlement location. This is borne out by increased site density, increased scale of the houses, change from detached to semi-detached house types, greater amount of parking spaces in the streetscene, overall under provision of allocated parking spaces, remoteness of some allocated parking spaces, reduced landscaping, size of some gardens, increased urbanisation of Summer Lane and interface distances between buildings. The proposal conflicts with Arun Local Plan policies D SP1, D DM1, LAN DM1, the National Planning Policy Framework (2019) and the National and Arun Design Guides.

2 In the absence of a signed Section 106 agreement and in respect of the proposed tenure mix, the development fails to ensure the provision of affordable housing to meets the needs of the district and therefore conflicts with policy AH SP2 of the Arun Local Plan and paragraphs 62-64 of the National Planning Policy Framework (2019).

3 In the absence of a signed Section 106 agreement, the development makes no provision for contributions to off-site public open space, to off-site children's play space, to off-site playing pitches, to off-site built sports & leisure facilities and to education/library/fire & rescue/medical infrastructure improvements, and is thereby contrary to the aims and objectives of the National Planning Policy Framework (2019), policies INF SP1, HWB SP1 & OSR DM1 of the Arun Local Plan and the Council's supplementary planning document "Open Space, Playing Pitches, Indoor and Built Sports Facilities" (January 2020).

4 In the absence of a signed Section 106 agreement, the development makes no provision for contributions towards the agreed Pagham Joint Scheme of Mitigation and will result in increased residential disturbance to the Pagham Harbour SPA/Ramsar site leading to the risk of harm to the conservation objectives of the site and the proposal is therefore in conflict with Arun Local Plan policies ENV DM1, ENV DM2 and with the National Planning Policy

Framework (2019).

I completely understand that you will not be happy with this turn of events but just to confirm that this is our final position and that we will not allow any changes to the scheme to overcome these concerns.

Can you let me know how you want to proceed (withdrawal or refusal) by this Friday (19/03/21) as we will make our decision then.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

T: 01903 737874
E: simon.davis@arun.gov.uk



Arun District Council, Civic Centre, Maltravers Rd, Littlehampton, West Sussex, BN17 5LF
www.arun.gov.uk

To register to receive notification of planning applications in your area please go to
www.arun.gov.uk/planning
Arun is a CIL Charging Authority, for more information go to www.arun.gov.uk/cil
Sign up to our newsletter [here](#)



Please note that essential maintenance is being carried out to the planning, building control and local land charges database during the week commencing 12 April 2021.

During this time there will be no public or staff access to any records held within this database, and it will not be possible to carry out any of the following tasks via the Arun website:

- Research planning and building control history
- View any planning applications, plans, agreements, tree preservation orders or competent persons data
- Submit building control applications
- Submit planning application comments
- Report any planning compliance issues

The publicity and consultation period for all planning applications that fall over this week will be extended by a further week to ensure no one is disadvantaged.

All other aspects of planning, building control and local land charges will be limited during this week and you are strongly advised to contact the individual departments before 12 April 2021 for specific restrictions during this time.

From: Thomas, Will [REDACTED]
Sent: 16 March 2021 11:09
To: Simon Davis <Simon.Davis@arun.gov.uk>

[REDACTED]

Subject: RE: P/97/20 PL - Land To North Of Summer Lane Pagham PO21 4NG

Simon

We've just noticed a minor error. To clarify - the application reference highlighted in red below should, of course, be the Reserved Matters application reference "P/70/19/RES".

Kind regards

Will Thomas
Senior Associate

SHOOSMITHS

Follow us on [LinkedIn](#)
View our latest legal updates on Twitter: [@shoosmithslaw](#)
View news about Shoosmiths on Twitter: [@shoosmiths](#)

www.shoosmiths.co.uk

From: Thomas, Will
Sent: 16 March 2021 10:53
To: 'Simon Davis' <Simon.Davis@arun.gov.uk>

Subject: RE: P/97/20 PL - Land To North Of Summer Lane Pagham PO21 4NG
Importance: High

Dear Simon

We are acting for Drew Smith in respect of the above application.

We understand that concerns have been raised by the Council's legal team, as well as Mr Collins, about the interrelationship between any permission granted pursuant to application P/97/20PL (the "Application") and the extant outline permission P/58/15 OUT (the "Outline Permission") together with reserved matters approval P/70/19/RES (the "Reserved Matters Approval").

The Council has raised a specific issue relating to the recent case of *Hillside Parks* which suggested that planning permissions should be considered holistically and that if a planning consent cannot be implemented fully, because of the impact of operations under another earlier permission, then any subsequent development authorised by that original planning permission may be unlawful. This means that only one of the permissions can lawfully be built out.

In addition, where the development authorised by the earlier permission has started, and the development authorized by the later permission is then completed in accordance with the terms of the later permission, the lawfulness of the development carried out under the earlier permission may be unclear. The Court of Appeal in *Hillside Parks* did not have to decide this point. *Hillside Parks* also turned on its particular facts and there remains some debate amongst lawyers as to its exact interpretation and the extent to which overlapping consents may affect one another.

Although we were initially comfortable that the two permissions could be delivered, having checked the planning conditions we recognise that there is some uncertainty over whether the Outline Permission can be lawfully implemented alongside any permission granted pursuant to the Application, as matters stand. Therefore, we wanted to discuss this with the Council at this stage and agree how we may be able to achieve planning permission for the overall development and make sure that we do not encounter any Hillside hurdle.

We think that an application could be made pursuant to S73 and S96A of the Town and Country Planning Act 1990 (the "Act") to amend the Outline Permission and Reserved Matters Approval so that any potential conflicts between the permissions are removed. This would lead to two separate permissions: (i) a permission for 36 dwellings pursuant to the Application; and (ii) a S73 permission for 69 dwellings, which effectively duplicates the Outline Permission for the remainder of the wider site. Those two permissions could then be implemented alongside one another without any concern about overlap or conflict.

We have examined the Outline Permission, the Reserved Matter Approval, existing condition discharge information and the S106 agreement, and our thoughts are as follows:

Outline Permission P/58/15/OUT

Application under S96a of the Act

- The description of the Development will need amending so that it does not refer to an exact no. of dwellings. Exact dwelling numbers will continue to be controlled via condition in the Outline Permission and any S73 permission.

Application under S73 of the Act and revised condition discharge information

- Condition 3 – Approved masterplans to be amended to carve out the application site for P/97/20PL (the “Application site”).
- Condition 4 – To be amended to refer to no more than 69 dwellings and a revised block plan.
- Conditions 6, 7, 8, 9, 10, 11, 15, 16, 18, 20, 25 and 26 – These do not need amending. However, in respect of the 73 permission, new details may need to be submitted which address the carved out area.

Reserved Matters Approval P/58/15/OUT

Application under S96a of the Act

- The description of the Development will need amending to mirror the revised Outline Permission description so that it does not refer to an exact no. of dwellings.

Application under S73 of the Act and revised condition discharge information

- Condition 1 – Approved plans to be amended to carve out the Application site.
- Condition 3 – Does not need amending. However, in respect of the 73 permission, revised drainage details may need to be submitted (which exclude the Application site).
- Condition 6 – Does not need amending. However, in respect of the 73 permission, revised electric vehicle charging scheme may need to be submitted (which excludes the Application site).
- Condition 19 – To be amended to remove reference to specific plot numbers within the Application site.

Section 106 agreement

- The section 106 agreement dated 27 September 2016 will then have to be amended by a deed of variation to reduce the level of on-site affordable housing and financial contributions to that which is proportionate to a 69-dwelling scheme.
- A separate section 106 agreement can then be entered into in respect of the Application which then provides for further affordable housing and financial contributions related to the 36-dwelling scheme.

In order to ensure that any permission granted pursuant to the Application can be lawfully implemented and not call into question the lawfulness of any further development under the Outline Permission, the permission for the 36-dwellings could be subject to a condition requiring the above S96a and S73 applications to be granted in respect the Outline Permission and Reserved Matters Approval (and any pre-commencement conditions for the new S73 permission for the 69-dwellings to be discharged) prior to commencement of the 36- dwelling scheme and perhaps further to ensure that only these permissions be implemented.

We would be grateful for your thoughts on the above, in particular whether the Application could be determined subject to the above condition requiring appropriate amendments to the Outline Permission and Reserved Matters Approval to remove any areas of potential conflict.

If it would help to arrange a conference call to discuss this in further detail, we would be very happy to do that.

Our client has also provided responses to Mr Collins’s specific concerns that were contained in his email to the Council of 3rd March (see below in blue). However, those comments are subject to the overarching points made in this email and our proposal to resolve any potential conflict between permissions which of course are to be the subject of further discussions and agreement between us.

Kind regards

Will Thomas

Senior Associate

SHOOSMITHS

Follow us on [LinkedIn](#)

View our latest legal updates on Twitter: [@shoosmithslaw](#)

View news about Shoosmiths on Twitter: [@shoosmiths](#)

www.shoosmiths.co.uk

From: Simon Davis <Simon.Davis@arun.gov.uk>

Sent: 04 March 2021 12:00

To: Daniel OShea [REDACTED]

Subject: FW: P/97/20 PL - Land To North Of Summer Lane Pagham PO21 4NG

NOTE: Email originated outside of Vistry Group.

Dear Daniel,

We have received the following objection to your application raising matters of procedure and law. I would be grateful if you can consider this and respond to me on the points made.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place



T: 01903 737874

E: simon.davis@arun.gov.uk

Arun District Council, Civic Centre, Maltravers Rd, Littlehampton, West Sussex, BN17 5LF
www.arun.gov.uk

To register to receive notification of planning applications in your area please go to
www.arun.gov.uk/planning

Arun is a CIL Charging Authority, for more information go to www.arun.gov.uk/cil

Sign up to our newsletter [here](#)



Please note that essential maintenance is being carried out to the planning, building control and local land charges database during the week commencing 12 April 2021.

During this time there will be no public or staff access to any records held within this database, and it will not be possible to carry out any of the following tasks via the Arun website:

- Research planning and building control history
- View any planning applications, plans, agreements, tree preservation orders or competent persons data
- Submit building control applications

- Submit planning application comments
- Report any planning compliance issues

The publicity and consultation period for all planning applications that fall over this week will be extended by a further week to ensure no one is disadvantaged.

All other aspects of planning, building control and local land charges will be limited during this week and you are strongly advised to contact the individual departments before 12 April 2021 for specific restrictions during this time.

From: paul collins [REDACTED]
Sent: 03 March 2021 16:08
To: Simon Davis <Simon.Davis@arun.gov.uk>; Karl Roberts <Karl.Roberts@arun.gov.uk>; Neil Crowther <Neil.Crowther@arun.gov.uk>

[REDACTED]

Subject: P/97/20 PL - Land To North Of Summer Lane Pagham PO21 4NG

Mr Davis

I write so as to highlight a number of important procedural errors relating to this application which unless corrected prior to decision would result in an unlawful decision (refuse or approve) being made:

- The application is described as being for '*Residential development of 36 No. dwellings (net increase of 15 over current consent P/70/19/RES) including affordable housing (additional 5 units) with associated access, parking & landscaping*'.

This is incorrect. The only planning permission relating to the site is that granted under ADC Ref: P/58/15 OUT and P/70/19 RES is a Reserved matters approval for the (a) Layout; (b) Scale; (c) Appearance; and (d) Landscaping reserved for later approval by condition 1 on that OPP.

RESPONSE: The description of development is not incorrect. P/70/19/RES is the consent of matters reserved by OPP P/58/15OUT. When considered together, these form the detailed planning permission.

The OPP granted under P/58/15 OUT was for the erection of 90 No. dwellings with associated access & open space and condition 4 of the OPP granted states: *The development hereby permitted shall be limited to no more than 90 dwellings and the reserved matters submitted pursuant to condition no1 shall generally accord with the principles shown on the drawing entitled 'Block Plan* so that the reserved matters approved under P/70/19 RES show a)Layout; (b) Scale; (c) Appearance; and (d) Landscaping details for 90 dwellings and does not consent anything else.

RESPONSE: This is not disputed. Our application is quite clearly a new detailed planning application for a part of the site. It is not an application for matters reserved under P/58/15 OUT

Therefore this application is an application for full planning permission to erect 105 dwellings on the site of P/58/15 OUT (including affordable housing) with associated access, parking and landscaping and is not as described.

RESPONSE: This is not the case. The application is for 36 dwellings on a part of the site which benefits from a detailed planning permission which comprises P/58/15 OUT and RM P/70/19/RES

- The application is supported by a completed certificate A which claims that the applicant has a freehold land interest in the land site edged red on the submitted Location Plan which includes parts of Footpath/Bridleway 100 also known as Summer Lane and there is clear evidence on the file that

demonstrates that the applicant does not have (or is unable to demonstrate) a Freehold interest in Summer Lane as stated in the certificate and the Council is, therefore unable to entertain the application. Certificate B needs to be provided and an ARTICLE 13 Notice needs to be served on all those who do have a Freehold interest in that land and the location plan needs to be altered so that it includes all the land necessary to develop the site with 105 dwellings as now proposed .

RESPONSE: A Certificate B notice is now provided. We can also evidence that notice was served on the Freehold owners as required. The application does include all land necessary to develop the site for the 36 dwellings which are applied for within this planning application.

- A substitute Block plan dated 8/2/2021 has been submitted with a red edge that excludes Summer Lane, conflicts with the location plan and excludes the land required to access the development as originally proposed and as stated in the supporting Transport Statement and also does not match or include all the site edged red in respect of P/58/15 OUT either so that its status is unknown.

RESPONSE: The Transport Statement to which Mr Collins refers is the Transport Statement for P/58/15/OUT and is clearly referenced within the addendum transport note by Paul Basham Associated dated October 20 that accompanies the current application documents. The site plan referred to does not purport to include all of the land within the location plan for P/58/15 OUT. The red line within the substitute Block Plan referred to does concur with the red line of the Location Plan. We can see how confusion may have arisen as the Location Plan is provided over the current OS map, which doesn't take into account the changes (ie; footpath and driveway crossings) resulting from the already consented planning permissions, whereas the Block Plan includes these areas. In terms of these areas being outside of 'freehold interest', this issue would be covered by issuing a Certificate B to the Landowners as mentioned above.

- Article 9 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) requires that this application is accompanied by a Design and Access Statement containing the information prescribed and this application is not accompanied by any such statement.

RESPONSE: A design statement has been provided in support of this planning application P/97/20 PL. Please clarify if the LPA consider that additional supporting information is considered necessary in addition to this.

- P/58/15 Out was granted subject to a S106 Agreement and an associated DOV and these have not been complied with to date and may not be altered by way of this application as these relate to the whole site subject to that OPP for 90 dwellings and this application only relates to part of that site.

RESPONSE: We consider that P/58/15 has been complied with. We also acknowledge that those documents cannot be altered by way of this application. Instead, it is anticipated that the S106 for P/58/15 OUT will be the subject to a DoV which would vary the agreement upon implementation of P/97/20 PL should this be permitted.

It seems to me that these procedural errors are fatal to this application because addressing same prior to a decision as is required would mean and require changes that affect the validity of the application submitted and/or would involve changes that are so significant as to materially alter the proposal such that a new application should be submitted. (See PPG Paragraphs 060/061 ID: 14-061-20140306).

I appreciate and understand that Officers may choose to disregard or ignore these representations but I thought it only fair and appropriate to bring these to their attention now as forewarned is forearmed.

Please place these representations on the file and make reference to same if and when any Officers report is compiled for the DCC.

Thank you

Paul Collins BA (Hons) DipTP

