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Chapman Lily Planning Ltd
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Date: 4th July 2019
Our Reference: 1428-MH

Dear Mrs Gardner

RE: PLANNING APPLICATION REF.CM/4/19/PL: LAND SOUTH OF THE A259 GREVATTS LANE, CLIMPING, WEST SUSSEX. PROPOSED DEVELOPMENT OF THE LAND BY THE CONSTRUCTION OF A CREMATORIUM

I write regarding the above planning application and on behalf of the Applicants, The Southern Co-operative Ltd.

We are aware that the Council is dealing with a second planning application for the construction of a crematorium, on land at Grevatts Lane West, near Climping (Your ref. Y/103/18/PL), submitted by Landlink Estates Ltd. We note the letter and correspondence from Jackson Planning dated the 24th of June 2019 which refers specifically to the Southern Co-op and Landlink Estates applications in relation to the sequential test.

We understand that both applications were withdrawn from the recent planning committee in order to give further consideration to flood risk matters. In respect of those matters we have taken our own legal advice and comment as follows.

The Sequential Test

The Southern Co-op application duly recognises the flood risk characteristics on the site and is accompanied by the required Flood Risk Assessment. The application plans show that we have sited the building in accordance with the 'sequential approach', locating the building away from the part of the site at highest risk of flooding whilst still maintaining the necessary separation distances from the road and footpath required by other legislation.

As required by national planning policy, the Southern Co-op application also includes a flooding sequential test assessment (contained within the Planning Statement), prepared in accordance



with 163 of the National Planning Policy Framework (NPPF). The Southern Co-op application has therefore provided all the necessary information from the outset to enable the Authority to make a fully informed decision.

The Landlink Estates application we note, has no sequential test accompanying its submission. This is despite the Landlink Estates site falling within an area of future flood risk as identified in the Council's Strategic Flood Risk Assessment Level 2. The Landlink Estates application therefore currently fails to meet the requirements of paragraph 163 of the NPPF.

In terms of the detail within the Southern Co-op's sequential test report, the site search is intrinsically linked to their assessment of alternative sites for the crematorium. This assessment formed a key part of the site finding process and the report sets out why the area of search for the proposed crematorium ended up being focused on the land between Littlehampton and Middleton. The site search then focused on land parcels within that search zone to identify land that would be reasonably available for the proposed use.

As detailed above, the Southern Co-op application is accompanied by the requisite sequential assessment report. In accordance with Government guidance set out at: <https://www.gov.uk/guidance/flood-risk-assessment-the-sequential-test-for-applicants>, potential alternative sites to inform the sequential test could have included;

- Sites allocated for the proposed use in the development plan – there are none (noted in paragraph 9.7 of the Design and Access Statement),
- Extant planning permissions for the proposed sites – there are none, and
- 'Windfall available' sites in the area- none were identified.

In the context of the final bullet point, '*available*' is clearly a key word. It is not enough for another site simply to exist. In order to be '*available*' the land must be reasonably available and deliverable for the type of development proposed. For alternative use types, e.g. residential development, available alternative sites may be identified from the Council's Strategic Housing Land Availability Assessment or similar, but there is no such comparative document for crematorium sites. As such, any available land must therefore be identified from sites already for sale on the open market or land that is known to otherwise be available for the development. The site of the Landlink Estates application did not fulfil that criteria for my clients at the point of submission of the application.

In terms of assessing the Landlink Estates site as an alternative location for the proposed development now, that site falls within Yapton Parish. We would draw your attention to policy E1 of the Yapton Neighbourhood Plan, which states;

Policy E1: Protection of high value agricultural land

Planning permission will be refused for development on grade 1 and grade 2 agricultural land unless:

- It involves the granting of planning permission for the development of the housing allocations identified in this Plan (Policy SA1 and Policy SA2); or
- It involves the granting of planning permission for any additional housing sites required by Policy H1 to meet objectively assessed housing needs in the Plan area.

The above policy clearly states that the only type of development that could be permitted in Yapton Parish in certain circumstances on high grade agricultural land is housing. The Landlink Estates site is within Yapton Parish, on high grade agricultural land, and in light of the above policy is therefore not suitable for the proposed crematorium. On this basis, the Landlink Estates site can be excluded as a possibility for the Southern Co-op scheme. This also confirms that planning permission should be refused for the Landlink Estates application.

By contrast the Southern Co-op application falls within Climping Parish. The Climping Neighbourhood Plan also has a policy for the protection of high-grade agricultural land, which states;

Policy CPN 10 Protection of high grade Agricultural Land

Development will not be permitted on the best and most versatile agricultural land, defined for the purposes of this policy as land graded 1, 2 or 3A in the national farmland grading scheme unless special circumstances can be demonstrated which may include

- there is an overriding need for the development in the proposed location and development on the site is demonstrated as the most sustainable option
- the development conforms to other statutory national and local planning policies

Whilst the above policy, like that of the Yapton Neighbourhood Plan, seeks to protect high grade agricultural land it is broader in terms of what may be permitted on such land, allowing all types of development 'where there is an overriding need'. We have demonstrated the need for the proposed crematorium in this location and that was accepted in your Officer's report for the recent planning committee.

As the Landlink Estates application omitted to provide the requisite sequential test assessment as part of the original application this also raises questions regarding the validity of any retrospective sequential test that they may now provide. The stated aim of the sequential test is to guide development to locations at lowest risk of flooding, i.e. it should guide where developments

ultimately end up being located. It is too late for Landlink Estates to move sites under this application and therefore the conclusion of any sequential test that may now be submitted by them is likely to have been led by its ultimate known end result. This impacts the level of confidence that alternative sites have been discounted on justifiable grounds, because the end result of the report would be a foregone conclusion.

We note the suggestion from Jackson Planning in their letter that the Landlink Estates application could be subject to a section 106 agreement requiring the development to be removed after 90 years. We have significant doubts over the deliverability of that approach, but in any event, any such legal agreement would have no bearing on the acceptability of the Landlink Estates application in terms of the sequential test. The aim of the sequential test is to steer new development away from areas in current or at future risk of flooding – there is no time limitation placed upon that. Any such S106 agreement would need to be considered at the ‘exceptions test’ stage, but one cannot consider the exceptions test until the sequential test has first been applied and passed, and for the reasons set out above, it cannot be for the Landlink Estates application.

In summary therefore;

- The Landlink Estates application lacks the requisite information to enable a decision to be made and should therefore be refused;
- The Landlink Estates site is unsuitable for crematorium development having regard to the unequivocal requirements of Yapton Neighbourhood Plan Policy E1;
- Yapton Neighbourhood Plan Policy E1 confirms that the Landlink Estates site is not suitable for the Southern Co-op Crematorium. The Southern Co-operative Sequential Test therefore remains sound;
- The Southern Co-op application has included all of the necessary information to enable a determination to be made from the start. It is the only one of the two applications that would therefore be justifiable to approve; and
- Attempts by Landlink Estates to tie their site to a 90 years time limit in order to avoid flood risk considerations would not be compliant with flood risk policy and would therefore open to challenge.

Flooding resilience of the Southern Co-op scheme

Notwithstanding all of the above, and to reiterate, paragraph 163 of the NPPF which states that development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable), it can be demonstrated that;

- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;*
- b) the development is appropriately flood resistant and resilient;*

- c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;*
- d) any residual risk can be safely managed; and*
- e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.*

The Southern Co-op application meets these tests, as set out below;

- a) The proposed crematorium building is sited outside of the current extent of flood zone 3. It falls part within flood zones 1 and 2. A location wholly within flood zone 1 is not possible due to the Cremation Act requirements to achieve a minimum separation from the road and footpath, and this constitutes an overriding reason that dictates the siting selected in this case;
- b) The development is appropriately flood resilient and resistant, as set out in the submitted Flood Risk Assessment;
- c) The development incorporates sustainable drainage systems,
- d) Due to the nature of the proposed use, residual flood risks can be safely managed. The use is one that simply would not operate during flooding events, services would be delayed until flooding has abated, and therefore there is no risk of visitors being present on the site during a flood event.
- e) The point of access to and escape from the site falls within the area at lowest risk of flooding.

We therefore conclude that there are no substantive grounds for planning permission for the Southern Co-op application to be refused on flood risk grounds. The development has been designed to be safe from flooding for the life of the development and satisfies the sequential test. By contrast, the Landlink Estates application was not accompanied by the necessary sequential test, is deficient in that regard, and could not pass a sequential test in any event. The Landlink Estates application should therefore be refused.

If you have any queries or require any further information please do not hesitate to contact me.

Yours Sincerely

A black rectangular box redacting the signature of Matthew Holmes.

Matthew Holmes BA (Hons) MA MRTPI