

[REDACTED]

From: Simon Davis
Sent: 15 March 2022 10:37
To: 'Thomas Roberts' [REDACTED]
[REDACTED]

Subject: RE: Y/186/21/PL - Bonhams Field, Yapton

Dear Thomas,

We have discussed this matter further internally but our position has not changed:

- You cannot amend the original s106 via a DoV on this partial replan application. You would either need to submit a separate s73 application (with a DoV) to run concurrently or reapply for the whole site (as Y/98/20/PL did) and submit a DoV with that. Both scenarios would require this application to be withdrawn as we cannot entertain an extension of time;
- You cannot change the description of the original permission/the description as set out within the original s106 via a DoV on this new application. The submitted DoV appears to do that by adding references to the phase 2 area which together with the phase 1 is for a greater number of dwellings than as permitted;
- You need to confirm that every single element of the original s106 and the conditions attached to the existing permissions can be implemented independently of each other. If any cannot then it would not be possible to achieve planning permission by a partial replan application. For example, is all new planting one side of the application red edge or the other? If anything approved straddles both areas then the partial replan cannot be implemented separately. It is not enough to just say that layouts fit together;
- The Council will also need to be satisfied that we will know which scheme is being implemented on which site for monitoring and compliance purposes and having two permissions with varied s106 and CIL on different parts of the site will make this exceptionally difficult;
- This advice reflects that given in our pre-application. As previously stated, our policy is not to negotiate any changes where pre-application advice was not followed (noting that it was my prompting that led to consideration of this) and so we will determine this application as it stands unless you wish to withdraw and resubmit.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

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



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From: Thomas Roberts [REDACTED]
Sent: 03 March 2022 16:33
To: Simon Davis <Simon.Davis@arun.gov.uk>

Subject: Re: Y/186/21/PL - Bonhams Field, Yapton

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Good Afternoon Simon,

Further to your email, please see our responses below.

Requirement for a Re Plan Application

I note your comments setting out that you intend to refuse permission unless we agree to withdraw and resubmit the proposal as a full application for the whole site.

The original approved application has already been implemented and development of phase 1 of that permission is now underway. Amending the redline for this application would have far reaching implications for the entire development – given that the resubmission would be partly retrospective. For example – the dwellings permitted for phase 1 would then both become CIL liable and ineligible for mandatory social housing relief, as their development has already commenced. This would also cause significant issues with our registered provider,. As such, the submission of a re-plan for part of the site is a more straight forward approach to increasing dwelling numbers on the site, subject to a suitable legal mechanism.

Legal Compliance

Please could you confirm for absolute clarity that you are not questioning whether the Council can lawfully grant permission for a partial re-plan. We have been advised by our client's solicitor that the current planning application can be lawfully granted, although should you require it we can provide you with a legal opinion to this effect within a week. However, it should be noted that if you were seeking a legal opinion, you should have made this clear in your pre-application response. We had interpreted the pre- app advice as requiring a statement on how the scheme will be integrated with the approved scheme on the wider site – which we have already provided.

You may recall that our client's solicitor emailed you almost 2 weeks ago (see email from Nicola Gooch of 18th February attached) advising you on how the forthcoming Deed of Variation to the current S106 Agreement would be structured to ensure the integration of the application with the wider site. The same email offered to provide you with an early draft of the Deed of Variation to demonstrate how this mechanism would work. You did not reply to this email and had you done so, you would have been in receipt of the draft Deed of Variation last week. You may recall in your email of the 14th February, you suggested that the application could proceed on its on current basis and that a deed of variation could follow the granting of consent. We therefore consider that we are working in accordance with your pre-application advice, as well as the advice you have given us to date during the determination period, for submitting a Statement setting out how the two permissions can be implemented together and the legal process involved.

Response to Pre-Application Advice

Given that in your pre-application response you failed to state that the application could not be developed side-by-side with the existing permission, we do not feel this is a reasonable basis to be refusing this application. In your pre-application you state *“If there are issues with the relationship of s106 and CIL then this suggests that you cannot develop side by side and so you would need to submit a full application.”* We have provided you with a mechanism for ensuring that the existing s.106 Agreement and the CIL liabilities on Phase 2 fit together – through the forthcoming Deed of Variation, which will clearly set out how the current application will be integrated with the wider site. Please could you provide us with the planning obligations required for Phase 2, as we have not received this to date and the intention is to incorporate these obligations into within the forthcoming Deed of Variation.

In terms of other advice provided in your pre-application response, we are also in accordance for the following reasons;

- Advice on design standards to be applied on the application – all standards have been complied with, as set out in the submitted plans and drawings.
- Advice on bin storage – all details have been included on the submitted plans and drawings.
- Requirement to ensure the overall Affordable Housing requirement for the **whole site** are met through the planning application and associated s106 agreement – I have set out our response in my email dated 01/02 and the Affordable Homes Statement within the PDAS. Whilst we note your comments regarding the tenure split not be in accordance with Policy AH SP2, as previously stated in my email, we are in accordance with the agreed tenure split of 50/50 as agreed on the original consent and s106 for Phase 1. Nonetheless, we are providing a 67% / 33% tenure split for the Phase 2 element in line with your Affordable Housing Policy within Phase 2.
- Highways advice focused on parking requirements – address within the submitted transport statement, plans and drawings.
- Requirements for Surface Water Drainage Statement and Impact Assessment – details provided within the submitted drainage / flood risk assessment.
- Heritage advice noted – Heritage Officer has confirmed no objections to the proposals.
- Advice on off-site infrastructure contributions focused on the need for S106 / CIL contributions – these are dealt with, within the forthcoming Deed of Variation.
- Advice provided on housing market mix – the proposed mix for 2, 3 and 4 bed properties is within a 5% range of the Council’s preferred mix as set out within the Council’s District Wide SHELAA 2016.
- Advice provided on M4(2) and M4(3) housing requirements – the site as a whole we deliver the required amount and this will be delivered as part of the Phase 1 development.

We therefore consider we have followed pre-application advice and your decision to not negotiate any changes is unreasonable, particularly given we are not proposing any changes to the submitted application.

Status of Current Planning Application

In addition, we have received positive responses from other statutory consultees including no objections from the following;

- Conservation Officer
- Lead Local Flood Authority
- Environmental Health Officer
- Arun Conservation Area Advisory Panel
- WSCC Archaeology Officer
- Natural England
- National Highways

Clearly the objection from the Housing Manager can be dealt with through a Deed of Variation, which again you will recall we originally sought to discuss with you and the Housing Manager some weeks ago although we have yet to receive your response. Whilst we also note there has been an objection from the Parish Council to the principle of development on this site and on issues relating to affordable housing, highways and drainage. All of these have been / are being dealt with in the submission and are referred too above.

Relevance of Example Schemes Provided by yourself

With regard to the two schemes you have mentioned that were refused on reasons relating to infrastructure requirements, both schemes are not comparable to the proposed Bonhams Field Phase 2 application. The first application (WA/59/20/PL) sought to reduce financial contributions and there was no deed of variation submitted with the application. The second application (P/97/20/PL) was refused primarily on reasons of overdevelopment and a lack of S106 agreement. Our clients fully intend to provide a deed of variation to the existing S106 agreement and be fully compliant with the appropriate financial and infrastructure contributions sought by the Council from both phases of development.

Summary

We trust the above and attached are sufficient for you approach the current application in a positive manner, although should you require more time to coordinate the Deed of Variation with your legal team our client would accept an extension of the determination period. We have been advised by our client's solicitor that a draft of the Deed of Variation will be provided by Mid March. It is disappointing that you are now acting in an obstructive manner, particularly given that the application was validated and you did not raise a request for further information earlier in the determination period. The lack of willingness to work in a proactive manner with ourselves is detailed in the attached timetable of correspondence and is contrary to Paragraph 38 of the NPPF which clearly states that Local Planning Authorities should approach decisions on proposed development in a positive way and LPAs should work proactively with applicants. I appreciate that Local Authorities are under a lot of pressure and you have procedures in place to help deal with a large volume of work. However, in this instance the matters are straight forward and it is in both parties interests (as this is a site under implementation) to cooperate to reach a favourable outcome. We are also aware of the increasing number of appeals within Arun relating to the significant housing shortfall and if this application is refused on this basis, we will be appealing and applying for costs.

I look forward to your response.

Kind Regards

Tom

Thomas Roberts BSc (Hons) MA UD (He/Him)
Principal Planning Consultant



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

Date: Tuesday, 1 March 2022 at 18:05

To: Thomas Roberts [REDACTED]

Cc: Ian Johnson [REDACTED]

Subject: RE: Y/186/21/PL - Bonhams Field, Yapton - Response to Affordable Housing Comments [IM-Active.FID3411480]

Dear Thomas,

I note the advice of your planning solicitor. However, please also note the following which I set out in the pre-application response (PAA/105/21):

“Please ensure that any future application demonstrates how the necessary infrastructure can be provided through a combination of s106 and CIL and taking account of the s106 attached to the outline permission.

The question of whether we can accept a partial re-plan application or a full is whether you can implement the two permissions side by side. If there are issues with the relationship of s106 and CIL then this suggests that you cannot develop side by side and so you would need to submit a full application. You cannot amend the original s106 through a partial re-plan that would now be subject to CIL and would therefore be hit by CIL and the original s106. We need to have certainty of when a trigger in the s106 is reached and the act of implementing two different permissions makes this impossible.

Please also note that two recent re-plan applications have been refused (WA/59/20 & P/97/20/PL) with reasons relating to the infrastructure requirements.

Should you consider it appropriate to submit a partial re-plan application then I would recommend that you seek your own legal advice and the application be accompanied by a statement setting out how the two permissions can be implemented together and how the conflicts between the existing s106 and CIL can be resolved. However, it is our view that a full application for XX dwellings would be the most appropriate course of action and that this could then be accompanied by a Deed of Variation to the original s106 with the other infrastructure requirements then being secured by CIL.”

It is disappointing that there was no response to these points in your submission for Y/186/21/PL and that it took me to raise it again during the application for it to be considered. Our policy as set out on our website is not to negotiate any changes where pre-application advice was not followed. For this reason, I do not agree to a meeting to discuss this.

It is our opinion that this application if permitted could not be developed side-by-side with the existing permission and that the existing s106 would be affected (as a DoV would be necessary). Unless you agree to withdraw and resubmit the proposal as a full application for the whole site, it is my intention to refuse permission under delegated powers.

Kind Regards

Simon J Davis MRTPI
Principal Planning Officer
Directorate of Place

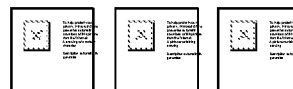
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From: Thomas Roberts [REDACTED]
Sent: 01 March 2022 10:50
To: Simon Davis <Simon.Davis@arun.gov.uk>
Subject: FW: Y/186/21/PL - Bonhams Field, Yapton - Response to Affordable Housing Comments [IM-Active.FID3411480]

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Good Morning Simon,

I hope you're keeping well. I appreciate that you have just come back off leave so are likely catching up with everything - have you had any thoughts on the below suggestion of having a meeting following Nicola's email setting out how we intend to address the Section 106 issue / affordable housing and M4(2) contribution.

Seaward are pushing us hard to get this sorted sooner rather than later, particularly given the determination target date is fast approaching and I appreciate that you will have to start getting the committee report ready etc.

Kind Regards
Tom

Thomas Roberts BSc (Hons) MA UD (He/Him)
Principal Planning Consultant

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From: Thomas Roberts [REDACTED]
Date: Friday, 18 February 2022 at 17:12
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Ian Johnson [REDACTED]
Subject: Y/186/21/PL - Bonhams Field, Yapton - Response to Affordable Housing Comments [IM-Active.FID3411480]

Good Afternoon Simon,

Following on from Nicola's email, are we able to arrange a meeting with yourself, the Housing Officer and Sovereign (the RP) to help us move forward with a legal agreement if you're in agreement with the approach Nicola has suggested?

Kind Regards,
Tom

Thomas Roberts BSc (Hons) MA UD (He/Him)
Principal Planning Consultant

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From: Nicola Gooch

Date: Friday, 18 February 2022 at 17:05

Subject: RE: Y/186/21/PL - Bonhams Field, Yapton - Response to Affordable Housing Comments [IM-Active.FID3411480]

Dear Simon,

Thomas asked me to respond to your email, as the planning solicitor advising the applicant on this scheme.

As you can appreciate, we have given the question of how best to integrate this application into the wider development site a great deal of thought.

Whilst Phase 2 is a stand-alone planning application, it is very closely connected with the wider development site. As such, we feel that it is appropriate to deal with the infrastructure contributions for this development through a deed of variation to the existing s.106 Agreement for the site which would:

1. Tie the 'Phase 2 Permission' (if granted) into the existing s.106 Agreement;
2. Adjust the financial contributions and payment triggers in the existing s.106 agreement to reflect the split between those units developed under the existing consent and those developed under the Phase 2 Permission – which would attract CIL;
3. Update the Affordable Housing provisions and requirements for M4(2) housing to reflect the 'balancing' or over/under provision issues previously discussed; and
4. Pick up any additional s.106 contributions or obligations arising out of the Phase 2 Permission

This would both ensure that the infrastructure contributions for Phase 1 and Phase 2 of the site were properly integrated and also provide you with a mechanism by which the over/under provision issues on the site as a whole can be addressed.

If this is an acceptable approach, please let me know and we can let you have an early draft of the deed of variation, so you can see how the mechanism would work.

Kind regards

Nicola Gooch
Partner
Irwin Mitchell LLP



-----Original Message-----

From: Simon Davis [mailto:Simon.Davis@arun.gov.uk]

Sent: 14 February 2022 18:18

To: Thomas Roberts

Cc: Lucy Brown; David West; Ian Johnson; Arjan De Jong

Subject: RE: Y/186/21/PL - Bonhams Field, Yapton - Response to Affordable Housing Comments

Dear Thomas,

The issue is that this application has been submitted as a standalone application. Although it seeks development in a part of an existing approved scheme, as it is not an alteration of that scheme or a fresh application for the whole of the development (like Y/98/20/PL was), it is necessary to apply policy to it as a single entity. I am currently unsure how to deal with this and will seek further advice internally. Note that I believe we may have a similar issue in terms of the provision of M4(2) suitable housing as there is a requirement in phase 2 for 4 such homes but none are shown/you may have over provided in phase 1?

Please can you also advise how you plan to deal with the conflict between the requirements for infrastructure contributions in the original s106 versus the need to apply CIL to this proposal? Do you intend to submit a Deed of Variation to the existing s106 to discount the contributions by 16 dwellings should this application receive permission?

Kind Regards

Simon J Davis MRTPI Principal Planning Officer Directorate of Place

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