

From: Simon Davis

Sent: 29 March 2022 14:51

To: Ian Johnson [REDACTED]

Cc: Thomas Roberts [REDACTED] Daniel Vick <Daniel.Vick@arun.gov.uk>; Lucy Brown

[REDACTED] Nicola Gooch [REDACTED] Steve Culpitt

[REDACTED] David West [REDACTED]

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

Dear Ian,

Our position was clearly set out in my email of 15 March and my instructions are to proceed to determine the application in accordance with that advice.

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

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From: Ian Johnson [REDACTED]

Sent: 25 March 2022 12:12

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

Cc: Thomas Roberts [REDACTED] Daniel Vick <Daniel.Vick@arun.gov.uk>; Lucy Brown

[REDACTED] Nicola Gooch [REDACTED] Steve Culpitt

[REDACTED] David West [REDACTED]

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

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Dear Simon

Are you available for a meeting early next week to respond to the matters set out in the emails referred to below, not least the Council's progress with the draft Deed of Variation to the original S106 Agreement? You will be aware the draft DoV was submitted to you over two weeks ago.

If a DoV is the Council's preferred mechanism for ensuring the correct implementation of the re-plan area (phased with the original application) our client's solicitor at Irwin Mitchell would be able to provide the necessary legal Undertaking, although we have not received any contact from the Council's solicitor.

I appreciate you are very busy, which is why I have requested the meeting so we can summarise the outstanding matters and hopefully reach a quicker agreement on a way forward that avoids our client being unnecessarily forced into an appeal situation.

In your reply to this email please would you confirm whether you have reconsidered your intention to move to a delegated refusal, or if not, on what grounds would you recommend refusal.

Regards

Ian

Ian Johnson BSc (Hons) MA PG UD MRTPI
Managing Director

 www.lukenbeck.com
30 Carlton Crescent, Southampton, Hampshire SO15 2EW



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From: Ian Johnson 
Date: Tuesday, 22 March 2022 at 07:57
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Thomas Roberts  Daniel Vick <Daniel.Vick@arun.gov.uk>, Lucy Brown  Nicola Gooch  Steve Culpitt 
Subject: FW: Y/186/21/PL - Bonhams Field, Yapton

Dear Simon

Further to the draft Deed of Variation submitted to you by my colleague Thomas on 9th March 2022 please find attached an updated Legal Opinion, dated 21st March 2022, commissioned by our client in response to your email of

15th March 2022 (below). You will note from the attached legal opinion there is no 'in principle' reason why a re-plan application cannot be supported by the Council, subject to a suitable legal mechanism ensuring the integration of the current planning application with the original consent.

You may note the Opinion sets out how the CIL and respective S106 obligations could be addressed, which is also evidenced in the draft DOV submitted to you on 9th March 2022. To assist with the Council's monitoring of the implementation of the original and re-plan elements our client has suggested notification provisions are included within the agreement, as referred to in Section 5.

Please can you update us on when you intend to respond to our emails of 15th March (below) and 18th March (providing examples of replan consents in Arun District)? In replying to this email please can you also provide an update on your consultation with legal services on the draft DOV and with WSCC on any planning obligations they may / may not request are included in the legal agreement.

Regards

Ian

Ian Johnson BSc (Hons) MA PG UD MRTPI
Managing Director

 www.lukenbeck.com
30 Carlton Crescent, Southampton, Hampshire SO15 2EW



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From: Thomas Roberts 
Date: Tuesday, 15 March 2022 at 16:19
To: Simon Davis <Simon.Davis@arun.gov.uk>
Cc: Ian Johnson  Nicola Gooch  Daniel Vick <Daniel.Vick@arun.gov.uk>
Subject: Re: Y/186/21/PL - Bonhams Field, Yapton

Dear Simon,

Thank you for your response.

Despite our best efforts we are disappointed that you are continuing to refuse to negotiate or engage with us on these issues. The approach adopted by Arun District Council in this instance does not reflect the proactive and effective planning spirit that the NPPF encourages and I am unaware of any provisions within the Town and County Planning Act that give local authorities the scope to state such reasons as you do in your email today for not

determining an application for planning consent. The remaining issue to resolve is predominantly legal in nature and requires engagement on both sides.

By providing a legal mechanism to deliver both schemes, it is not intended to be a negotiation but the provision of an adequate legal framework. It is important to acknowledge that apart from this one legal issue, the remainder of this application is positive and development plan compliant and no other single issue would justify a refusal of the application. Furthermore, when determining a planning application, should more time be required to iron out key issues associated with a planning application then that is by agreement of the applicant in writing (NPPF para 47) and not at the discretion of the planning authority. I have been monitoring all consultation responses to date – most of which have not raised any objection - and it should be noted that you are still awaiting comments from West Sussex County Council on contributions. Given this directly impacts the Section 106 issue we are trying to resolve, it would be premature to refuse the application on this matter at this stage. Given that you as Case Officer have not allowed sufficient time to ensure that all relevant consultation responses have been received, and your repeated refusal to meet or engage with us to resolve outstanding matters, my client will not be withdrawing the application.

Please see attached the legal opinion dated 8th March 2022 that was prepared by our client's Solicitor, Nicola Gooch of Irwin Mitchell, last week in response to your email dated 1st March 2022. This sets out how we intend to address the Deed of Variation / Section 106 approach, however in light of your recent email today, we will provide you with an updated opinion in due course to cover the newer points that you have raised.

We note that you have stated that we cannot amend the original Section 106 via a Deed of Variation. To the contrary, we believe that it can and should be grateful if you could provide us with evidence or justification supporting this point (e.g. any legal opinion that you may have sought or case law to inform your reasons outlined in your email below) as it is our view (supported by our Client's Solicitor) that it is legally possible to do this without too much difficulty and has been successfully achieved on other sites elsewhere (including in neighbouring planning authorities). The solution we have offered to you is not the only way forward with this. Further options also include:

Option 1: a composite Section 106 to supersede the existing agreement and include additional obligations for the replan element (Phase 2); or

Option 2: alternatively our client implements up to the 24th dwelling of the approved permission under the existing Section 106 agreement and ceases development at that point. A subsequent application for the additional houses in Phase 2 would then be submitted with its own legal agreement and CIL obligations.

Next Steps:

1. We would be grateful to have a meeting with you and a member of your legal team at the earliest opportunity to discuss this matter with the aim of resolving any misunderstandings and achieving a successful outcome for my client on what should be a relatively straightforward matter. Please could you advise me of dates that you are available for such a meeting?
2. We welcome sight of any evidence or case law you have to support your points raised in your email today.
3. We will provide you with an updated legal opinion from my Client's Solicitor to address the newer points raised in your email today.
4. My client's planning application will not be withdrawn.

I look forward to your response.

Kind Regards

Tom

Thomas Roberts BSc (Hons) MA UD (He/Him)

Principal Planning Consultant

  | www.lukenbeck.com

30 Carlton Crescent, Polygon, Southampton, Hampshire SO15 2EW



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