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West Sussex BN18 0DX

Mr Neil Crowther
Group Head of Planning
Arun District Council
1 Maltravers Road
Littlehampton
BN17 5LF

11 JUL 2017

10 July 2017

Dear Mr Crowther,

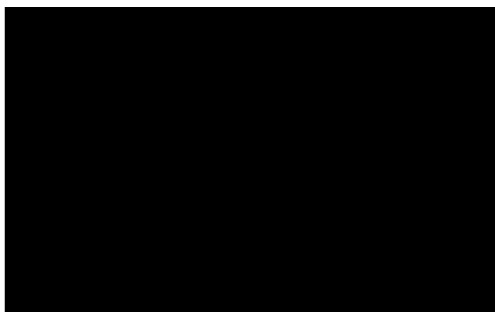
PLANNING APPLICATION REPORT ON BONHAMS FIELD, MAIN ROAD, YAPTON BN18 0DX
Outline Application for Erection of 56 Dwellings: Ref Y/1/17/OUT

I am writing regarding the above, and wish to submit further representations (attached) which I assume will be brought to the attention of the Development Control Committee at its meeting on Wednesday 19 July.

I am extremely concerned that the Planning Officer's report does not appear to fully understand or set out the legal duties and requirements on the Council with respect to refusing planning applications which are not in accordance with the Development Plan, and also does not properly address, weigh up, and balance all the relevant material considerations in his assessment, in line with statutory obligations and Court judgements, including the most recent Court of Appeal judgement on the status of the NPPF's 'presumption in favour of sustainable development'.

I would urge the Council's Planning Officers and its Development Control Committee to review and reflect on the attached representations, and to ask whether the proper weight and balance has been given to the Development Plan (Local Plan and Neighbourhood Plan), and to the considerable adverse impacts, in particular to heritage assets and their setting, that significantly and demonstrably outweigh the benefits of this scheme.

The adverse impact of the scheme on heritage assets, agricultural land, and local amenity are not fully assessed in the Planning Officers Report, and, therefore I would also request that this planning application is not determined until a Members Site Inspection takes place in order to fully brief councillors on these impacts – which are best understood through a visual inspection rather than the applicant's inadequate plans and illustrations.



RESPONSE BY ANGELA BROUGHTON TO PLANNING OFFICERS REPORT TO ARUN DC DEVELOPMENT CONTROL COMMITTEE (19 July 2017 Meeting) ON PLANNING APPLICATION FOR BONHAM'S FIELD (Ref: Y/1/17/OUT)

Agenda Page No.	Planning Report Section Heading	My Further Representation
84/85	List of relevant Development Plan policies and other planning policies	The Planning Officer has omitted to include the Council's Proposed Main Modifications to the Local Plan (2017) as an emerging Development Plan document. In law, this document is a "material consideration" and should form part of the assessment of this planning application. He has also omitted reference to Policy E8 of the Yapton Made Neighbourhood Plan which requires proposed developments to "preserve or enhance the character" of the local Conservation Areas.
86	This section sets out the legislative background and requirements for making a decision on this planning application.	The Planning Officer has omitted an important legal clarification relating to S38 (6) of the Planning and Compulsory Purchase Act. <u>The Planning Officer confirms that the proposal is not in accordance with the Development Plan</u>, and therefore legally the planning application can only be approved if "other material considerations indicate" that it should. HOWEVER, the very recent High Court decision on 30 June 2017 (Barwood Strategic Land II LLP v East Staffordshire Borough Council & Anr Case No. C1/2016/4569) confirms that other material considerations must be powerful enough to justify a planning decision that is otherwise than in accordance with the development plan. OTHER MATERIAL CONSIDERATIONS SHOULD, THEREFORE, ONLY OVERRIDE THE STATUTORY DEVELOPMENT PLAN IN EXCEPTIONAL CIRCUMSTANCES.
87	This section sets out other material considerations that can be taken into account when making a decision on this planning application	The Planning Officer states that the "Council cannot demonstrate a 5 Year Housing Land Supply at present and therefore the need for housing and the presumption in favour of sustainable development is a material consideration. The NPPF provides a presumption in favour of sustainable development". THIS STATEMENT IS INCOMPLETE AND MISLEADING.

87

This section sets out other material considerations that can be taken into account when making a decision on this planning application

First, the Councils duty under section 38(6) is not displaced or modified by government policy in the NPPF. Such policy does not have the force of statute. Nor does it have the same status in the statutory scheme as the development plan. Indeed, as one might expect, the NPPF acknowledges and reinforces the statutory presumption in favour of the development plan, and it also explicitly recognizes and emphasizes its own place in the plan-led system of development control.

Secondly, there is NO overriding presumption in favour of sustainable development in the NPPF (para 14) to the extent that it ‘trumps’ the Development Plan. Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, its relevance to a planning decision is as only one of the other material considerations to be weighed in the balance. The law requires policies in the NPPF to be taken into account, but the weight attached to them as an ‘other material consideration’ is a judgement that is entirely in the hands of the decision maker.

Even if the presumption in paragraph 14 of the NPPF applies, it is nonetheless necessary to apply section 38(6) and evaluate the weight to be given to policies in the development plan (including policies for the supply of housing land which may have been deemed to be “out of date”), and this may result in a refusal of planning permission

This clarification of the status of NPPF policies has been set out in various legal judgements including the most recent one on 30 June 2017 - Barwood Strategic Land II LLP v East Staffordshire Borough Council & Anr Case No. C1/2016/4569. In this judgement, the Court of Appeal concluded that when the section 38(6) duty is lawfully performed, and if Paragraph 14 of the NPPF is applied, a planning application can be given the benefit of a “tilted balance” in favour of approval - BUT even if it is given the benefit of the “tilted balance” in its favour it may still be found unacceptable, and planning permission for it refused. This is the territory of planning judgment.

The judgement of the Court of Appeal stated that “in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict.

87	This section sets out other material considerations that can be taken into account when making a decision on this planning application	<u>"The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment."</u> The Planning Officer also states that "the application must be assessed as to whether the benefits of the development outweigh any adverse impacts." THIS IS AGAIN AN INCOMPLETE AND MISLEADING STATEMENT. Given that the Planning Officer has already confirmed that the proposal is not in accordance with the Development Plan, any further assessment must be done in two stages: (a) what "other material considerations" are relevant to making a decision (both benefits and adverse impacts); and does the 'balance' of these other benefits/adverse impacts tip the assessment in favour of approval even though the proposed development is contrary to the Development Plan.
87 - 89	This section sets out the Conclusions relating to the weight to be accorded to policies in the Development Plan and to other material considerations such as the NPPF.	The Planning Officer states that "As the Council is unable to demonstrate a 5 Year supply of deliverable housing, the tilted balance in favour of a grant of permission is triggered in the NPPF except where the benefits are significantly and demonstrably outweighed by the adverse effects of the development. This again is AN INCOMPLETE AND MISLEADING STATEMENT, as it assumes that the non-compliance with the Development Plan can be set aside in the assessment – which it cannot. HOWEVER, as stated above, the High Court has recently issued a judgement saying that the absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see also paragraphs 70 to 74 of the judgment in Crane v Secretary of State for Communities and Local Government [2015] EWHC 425 (Admin)). The Planning Officer also states that Policy BB1 of the Yapton Neighbourhood Plan is "considered to be out of date and therefore afforded little weight." THIS STATEMENT IS BASED ON A MISINTERPRETATION OF THE LEGAL POSITION as clarified in the Planning Courts and the recent High Court decision. Policy BB1 is not a housing supply policy but a development restriction policy (like a green belt designation) and therefore, it cannot be considered to be out-of-date simply because there is allegedly an absence of a 5 Year deliverable supply of housing land identified by the District Council.

87 - 89

This section sets out the Conclusions relating to the weight to be accorded to policies in the Development Plan and to other material considerations such as the NPPF.

This has been tested in the Courts, and any planning decision based on the Council's misinterpretation will be legally challengeable.

The Planning Officer also states that the "Housing and Economic Land availability Assessment supports the principle of residential development on this site and recognises it is deliverable." THIS IS AGAIN AN INCOMPLETE AND MISLEADING STATEMENT. As stated earlier in his report, the Planning Officer confirmed there is no approved Council 'residential designation' for this Field. It is one of a number of 'possible sites' that were identified as options for residential development within Arun District.

The Council's Proposed Main Modifications to the Local Plan (2017) is not referred to in the Planning Report, yet it would now appear to demonstrate that the 5 Year deliverable housing supply within Arun District can be met WITHOUT the proposed housing development on Bonhams Field. The Parish of Yapton will be required to accommodate further housing in addition to existing completions and allocations, but the new evidence demonstrates that THERE ARE PREFERRED ALTERNATIVE STRATEGIC AND OTHER HOUSING SITES IN AND AROUND YAPTON THAT ARE DELIVERABLE AND WILL CONTRIBUTE TO MEETING THE NECESSARY HOUSING LAND SUPPLY REQUIREMENT.

There is also a recognition that neighbourhood planning authorities in the Arun District should be given sufficient time carry out public consultation within their communities, and to then modify the existing 'made' Neighbourhood Plan to accommodate the greater housing numbers now required.

The Planning Officer also states that "The Ford Lane decision confirmed that Yapton is one of the most sustainable settlements in the District. This further supports the principle of additional residential development in the village." THIS PROPOSED DEVELOPMENT IS ON A FIELD OUTSIDE THE VILLAGE.

The Planning Officer then concludes that because the Local Plan is out of date, and because there is no 5 Year supply of deliverable housing, the "proposed development should (only) be considered with regard to other material considerations." THIS IS UNLAWFUL and LEGALLY CHALLENGEABLE.

		A conclusion has been clearly reached without sufficient weight being given to non-compliance with relevant Development Plan policies, in particular the weight to be given to statutory policies GEN 2, GEN 3, AREA 2 and GEN 29 of the Arun Local Plan, and policies BB1, E1, and E8 of the Yapton Made Neighbourhood Plan.
90 - 91	The design, layout and public open space elements are assessed in this section of the report.	The Planning Officer states that the "indicative layout is the result of a consultation with the local community, particularly in terms of how the site should be viewed from the Main Road Conservation Area." He also states that "it is considered that the details for design, layout, appearance, scale and landscaping would be a matter for a reserved matters application. However, the Indicative layout and design has been informed by engagement with the local community and is considered to be acceptable in terms of the development plan and the NPPF." The impression given is that the local community have been actively involved in designing and supporting the indicative layout. THIS IS MISLEADING. As far as I am aware there were no local representations supporting the indicative layout. I understand that a presentation was made to the Parish Council, but THE INDICATIVE LAYOUT HAS NOT BEEN INFORMED BY ENGAGEMENT WITH THE IMMEDIATE NEIGHBOURS TO BONHAMS FIELD, AND IS NOT ACCEPTABLE TO US. There has certainly not been any attempt to engage with me or my family, as one of the most affected residents in the Village.
91 - 92	The impact on heritage assets is assessed in this section of the report	The Planning Officer states that "The initial layout submitted reflected comments made by the local community to ensure that it addressed their aspirations and concerns regarding the adjacent Main Road Conservation Area and listed buildings located within it." SEE MY COMMENTS ABOVE. THERE IS NO LOCAL COMMUNITY SUPPORT FOR THIS SCHEME AS A WHOLE, OR FOR THE INDICATIVE LAYOUT. The Planning Officer refers to the nineteenth century listed buildings within the Main Road Conservation Area. It has already been pointed out on a number of occasions that Elm Barn (aka Bonhams Barn) is an 18th century structure. The official description is an "intact mid C18th barn reusing some earlier timbers" which "has group value with the former farmhouse".

91 - 92	The impact on heritage assets is assessed in this section of the report	The Planning Officer states that the “scheme would have a limited affect (sic) on the significance of the designated heritage asset or the character or appearance of the conservation area. As there is no substantial harm the proposal would accord with historic environment policy.” THIS IS CLEARLY MISLEADING. One of the reasons Elm Barn is listed as of architectural and historic merit was due to the fact its countryside and farmland setting reflected its previous use. Its relationship with the landscape is “intimate” according to the Council’s Historic Buildings Advisor. To now surround it with a modern suburban housing estate seems to be particularly inappropriate, incongruous and harmful to its protected status. THE COUNCIL’S SENIOR HISTORIC BUILDINGS ADVISOR OBJECTS TO THE PROPOSED SCHEME and correctly raises issues of the change to the experience and appreciation of all the affected Listed Buildings if they were in a completely new setting. He also raises serious concerns about the out-of-character ‘Poundbury-style’ suburban nature of the proposed development, in terms of scale, density and design, which does not integrate at all well with its rural village location and context. While the Historic Buildings Advisor says that the adverse impact would be “less than substantial harm” because the actual heritage assets remain in situ, he is clearly very concerned about the very harmful impact on their setting and on the character of the Conservation Area. ON THE REVISED INDICATIVE LAYOUT HIS OBJECTION IS MAINTAINED. It should be noted that the applicant has provided no illustrations of the impact of this suburban intrusion into the views of the Conservation Area as you enter the village from the west, in particular to illustrate the likely visual impact on the listed barn and farm house. HOW CAN THE IMPACT BE ASSESSED WITH NO COMPUTER-GENERATED IMAGES SHOWING THE VIEWS TO AND FROM THE ENTRANCE TO THE CONSERVATION AREA, AND THE SAME FOR THE LISTED BUILDINGS? The decision of the Court of Appeal in Barnwell Manor (Barnwell Manor Wind Energy Ltd v East Northants District Council, English Heritage, National Trust & SSCLG [2014]) confirms that the assessment of the degree of harm to the heritage asset is a matter for the planning judgement of the decision-maker.
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91 - 92	The impact on heritage assets is assessed in this section of the report	HOWEVER, where the decision-maker concludes that there would be some harm to the heritage asset, in deciding whether that harm would be outweighed by the advantages of the proposed development (in the course of undertaking the analysis required by s.38(6) PCPA 2004) the decision-maker <u>is not free to give the harm such weight as the decision-maker thinks appropriate.</u> Rather, the Barnwell Manor judgement establishes that A FINDING OF HARM TO A HERITAGE ASSET IS A CONSIDERATION TO WHICH THE DECISION MAKER MUST GIVE CONSIDERABLE IMPORTANCE AND WEIGHT IN CARRYING OUT THE BALANCING EXERCISE, in accordance with S66(1) of the Listed Buildings Act 1990. There is therefore a “strong presumption” against granting planning permission for development which would harm a heritage asset. In the Forge Field case (Forge Field Society & Others v Sevenoaks DC & Interested Parties [2014] EWHC 1895), the High Court explained that the presumption is a statutory one. It is not irrefutable. It can be outweighed by material considerations powerful enough to do so. But a Local Planning Authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation (of the heritage asset and its setting), and if it demonstrably applies that presumption to the proposal it is considering. THE PLANNING REPORT DOES NOT DO THIS. Even if a finding of 'less than substantial harm' would be caused to the setting of a Grade II listed building, there is still a requirement on the decision maker to comply with the requirements of the Listed Buildings Act 1990, and carry out the balancing exercise as outlined in para 134 of the NPPF. This was a recent ruling made in the High Court - Forest of Dean District Council and Secretary of State for Communities and Local Government and Gladman Developments Ltd (March 2016). The significant harm and adverse impact to the character of the Main Road Conservation Area, and the setting of nearby Listed buildings, in particular Bonhams Farm and Elm Barn, is given insufficient importance and weight in the Planning Officer’s assessment, and in the balancing exercise.
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94	The impact on agricultural land is assessed in this section of the report	Despite what the Planning Officer states, the proposed development is contrary to Policy E1 in the Yapton Neighbourhood Plan, which restricts loss of Grade 1 or Grade 2 Agricultural Land unless it is specifically allocated for housing in the Development Plan, WHICH IT IS NOT. Arun District Council's own Sustainability Appraisal also has an objective to "avoid the loss of best and most valuable agricultural land", SO THE LOSS OF THIS LAND IS THEREFORE NOT SUSTAINABLE. The Planning Officer states that "despite the grade of soil at the site, it is considered that this site is limited for future agricultural use due to its size/workable area and accessibility." THERE IS ABSOLUTELY NO EVIDENCE TO BACK UP THIS STATEMENT WHICH APPEARS TO BE BASED ON THE APPLICANT'S OWN ASSESSMENT, WITH NO DISCUSSION WITH THE TENANT FARMER OR ANY INDEPENDENT ASSESSMENT. Para 6.2 of the applicant's Agricultural Assessment document prepared by Bruton Knowles states that: "the area of land, when considering all factors of a modern arable enterprise or stock management, that the land cannot profitably be cropped or grazed by the owner/occupier". This statement has been provided with absolutely no sound and robust evidence to back it up. If required the tenant farmer can provide information to prove otherwise. The significant harm and adverse impact caused by the loss of Grade 1 Agricultural land is given insufficient importance and weight in the Planning Officer's assessment.
96/97	The impact on local infrastructure is assessed in this section of the report	The Planning Officer states that "the principle of the proposal is considered to be acceptable and there is a presumption in favour of sustainable development." THIS STATEMENT IS ALSO INCOMPLETE AND MISLEADING. As stated above, there is no presumption in favour of sustainable development in law. In recent Court Judgements (including Barwood Strategic Land II LLP v East Staffordshire Borough Council & Anr Case No. C1/2016/4569) it has been upheld that it was a mistake to refer to the presumption in favour of sustainable development as a "golden thread" running through the NPPF. The Court of Appeal stated that the phrase in fact only appears once in the document and it was "wholly misconceived" to treat it as justifying a widening of the presumption in order to override the statutorily adopted Development Plan policies.

97	The impact on residential amenity is assessed in this section of the report.	The Planning Officer states that an “indicative layout has been provided and indicates that there would not be any significant impact on neighbouring residential amenity”. AS THERE IS NO ASSESSMENT IN THE REPORT ON THE LIKELY AMENITY IMPACT (Loss of Openness, Privacy, Overlooking, Noise etc.) OF THE MOST RECENT INDICATIVE LAYOUT ON THE MANY ADJOINING OCCUPIERS AND PROPERTIES, HOW CAN SUCH A CONCLUSION BE REACHED?
97 - 98	The conclusion and recommendations are set out in this section of the report.	The Planning Officer states that the “the proposed development is on balance acceptable in terms of the development plan when taken as a whole and is therefore recommended for approval. THIS DOES NOT MAKE SENSE, as on pages 86 and 97 of the Report the Planning Officer clearly states that “the proposal is NOT considered to comply with the relevant Development Plan policies”. The Planning Officer states again that Policy BB1 in the Yapton Made Neighbourhood Plan is out of date and should be afforded little weight. As stated above, this is a misapplication of recent Court Judgements as it is not a housing supply policy, and therefore any decision based on this assumption and assessment is legally challengeable. The Planning Officer has failed to demonstrate that the benefit of building 56 houses on this Field is an exceptional benefit that overrides the non-compliance with the Development Plan. There are also considerable adverse impacts which significantly and demonstrably outweigh this benefit, including substantial harm caused by loss of countryside, loss of Grade 1 Agricultural Land, to the character of the Main Road Conservation Area, and to the important landscape setting and visual connection of Bonhams Field to the adjacent Farm and Barn, which are both Grade II Listed buildings. In conclusion, and as previously stated, the proposed development is not in accordance with the adopted Development Plan, and this is acknowledged by Planning Officers both in their pre-application advice and in the Planning Report. The question, therefore, is whether there are other exceptional material considerations which indicate that the planning application should be approved. There are not. The proposed development does not comply with the planning policies in the emerging Arun Local Plan (and the Proposed Main Modifications to the draft Arun Local Plan).

97 - 98	The conclusion and recommendations are set out in this section of the report.	Bonhams Field is not identified as a preferred housing site in the emerging Arun Local Plan, nor in the Housing Implementation Strategy. The proposed development on this site is not identified in the emerging Local Plan and Housing Implementation Strategy as being required to meet the OAN deliverable 5-Year or 15-Year Housing Land Supply requirements of the District. Other more suitable housing sites have already been identified by the District Council and the Parish Council in order to meet the increased OAN for the area. The proposed development conflicts with many of the core principles of the NPPF. The proposed development is, therefore, not a sustainable development, and nor is the site in a sustainable location as it is outside the village boundary. Even if it were to be considered a sustainable development, It is clear that there are considerable adverse impacts that significantly and demonstrably outweigh any benefits when assessed against the policies in the NPPF taken as a whole. THE DISTRICT COUNCIL MUST, THEREFORE, REFUSE THIS PLANNING APPLICATION
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10 July 2017