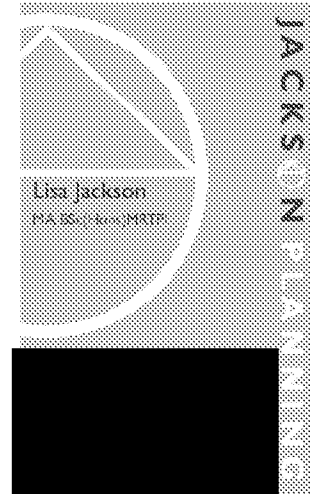


Submitted by email only

Copy Andrew Tice, Landlink Estates Ltd, Tracey Dunn WSCC

March 31, 2022

Simon Davis
Principal Planning Officer
Arun District Council
Civic Centre,
Maltravers Rd,
Littlehampton



Dear Simon,

Y/3/22/OUT Hybrid Application comprising of: Full application for Phase I for 30 No residential dwellings, new access from Bilsham Road, public open space, landscaping, sustainable urban drainage and associated works and Outline planning application for further phases of up to 110 No dwellings and associated infrastructure (with all matters reserved) and

I write in response to the objection from WSCC Education who raise this on the basis of secondary school planning places for the above application. The applicant recognises that developers are required to mitigate the impact of their proposed developments in particular for school places that are required in perpetuity. The proposal will mitigate its impacts through the payment of the community infrastructure levy where this required.

The objection refers to Local Plan policies INF SP1 and INF SP2 which seeks provision of a secondary school in Arun. The objection states that All sites are required to be in accordance with INF SP1 and INF SP2 for the provision of a secondary school in Arun District.

That policy interpretation is clearly incorrect.

Caveat c) is as follows:

“c). All development that generates a need for secondary school places where there is an identified deficit shall make an appropriate financial contributions [sic] as identified in the Infrastructure Delivery Plan.” (my emphasis)

In order to be caught by the policy there would need to be an identified deficit of secondary place provision, and the contributions will be made as per the Infrastructure Delivery Plan.

I refer you to paragraph 2.46 and 2.47 of the supporting planning statement. The Arun District Council Infrastructure Funding Statement (IFS) 2019/20 confirms CIL payments will secure the following for non-strategic development sites.

- Education contributions to meet the education capacity shortfall that non- strategic sites create beyond cumulative impact of the strategic housing allocations.

As this site is a non-strategic site it is clear from the Council's documentation that mitigation is to be provided by the community infrastructure levy (if there is a shortfall). This is something which the school planning officer recognises. The response by the County Council in relation to work by the applicant elsewhere in West Sussex

confirms that the community infrastructure levy will be sought by the County Council to provide the necessary education mitigation for proposed development.

Nature of WSCC Objection

The specific purported objection by the local education authority appears to be two-fold

1. Due to the inability to expand the existing secondary school provision to accommodate the pupils arising from the proposed new development
2. The lack of an allocated or secured site for a new secondary school, meaning that this education facility cannot be relied on in the short term

1. Can the secondary school pupils arising from the development be accommodated?

This objection cannot be sustained. Firstly, there is more than sufficient capacity within the secondary school places planning at an appropriate school in the appropriate catchment without the need for any expansion.

The development will generate a secondary school **child yield of 25.2 pupils**.

The published data from February 2021¹ confirms that the Ormiston Academy has a net capacity of 816 places with 542 children as the number on roll leaving a **capacity of 274 places**, so it is only operating at 66% capacity. Schools are only deemed full at 95%. Even though St Phillip Howard Catholic High School has exceeded net capacity, the average capacity set out in the WSCC document confirms that appropriate Planning Area is at 74% capacity for secondary education. This means there is no shortfall in secondary places for the child yield of 25.2 from the development. There is 21% headroom within the appropriate secondary schools. Mitigation cannot be required from the applicant if there is no direct need for mitigation. It would not meet the necessary tests of the CIL regulations.

2. Is the lack of an allocated or secured site for a new secondary school prevent development?

As WSCC confirm there is no identified site for a new secondary school within the District, no costed scheme, and no timetable for the delivery of a new school. Why should this be a barrier to otherwise acceptable development? (See below it was not a barrier to the land south of Barnham Station development being granted consent).

The relevant Local Plan policy INF SP2 sets out but the broad location of search for the school is defined as being in the central part of the district based on the increase of population from the strategic sites. This application is not a strategic site. The March 2019 paper² (whilst having no formal status as a development plan document) is clear that needs generated from non-strategic sites are different to the strategic sites (para 4.1). Given that strategic sites are not CIL rated and non-strategic sites are CIL rated there must be a clear distinction about how contributions are made, otherwise this generates 'double dipping'.

Could a financial contribution overcome this specific part of the objection? The Council would have to demonstrate that any contribution is directly related to the proposed development. Given that the Council was seeking a school to accommodate growth from the strategic site and it has not established the actual cost of providing a new secondary school and there is no clearly identified site or timetable for its delivery it is highly unlikely that a new secondary school could meet the needs of this application. In addition, given the non-negotiable nature of CIL payments for the scheme the Council would be 'double dipping'.

Given the speed of the development expected under the interim policy is seeking development within 2 years of permission it seems highly unlikely that the new secondary school can provide school places in a timely manner,

¹ West Sussex County Council, February 2021, Planning School Places 2021

² WSCC and ADC Developer obligations regarding the 10FE secondary school requirement in Arun District Council Agreed by ADC and WSCC March 2019

and in any event, they are not required to contribute to additional school places due to the existing 21% headroom in secondary school places.

It is therefore arguable that a contribution towards the provision of a new secondary school cannot meet the requirements that a planning obligation that must be fairly and reasonably related in scale and kind to the development, especially as the CIL contribution is already identified as providing for secondary education, where it is required.

Is a financial contribution to Secondary Education justified?

It is a long-established principle that in order to fall within the scope of section 106 of the 1990 Act a planning obligation must fairly and reasonably relate to the development in question whether or not the obligation is necessary to overcome a planning objection³.

In accordance with Regulation 122 of the CIL Regulations, if a planning obligation is to constitute a reason for granting planning permission it must also be necessary in order to make the development acceptable in planning terms. The NPPF requires that planning obligations should only be sought where they are necessary to make development acceptable in planning terms. Whether or not a planning obligation meets the test of necessity is a matter of planning judgment⁴.

WSSC have fallen well short of demonstrating that a planning obligation requiring a financial contribution towards secondary education is necessary to make the present scheme acceptable. The policy position (INF SP2 c)) is that contributions will be sought when there is an identified deficit in secondary school places. This is patently not the case for this site as set out in the Planning School Places 2021 report.

In addition, the payment of CIL for every liable dwelling in the development contributes towards education. 70% of CIL receipts of the development are paid to WSSC, part of which will contribute to education requirements.

Consistency of Decision Making

The application at Land South of Barnham Station, Barnham, West Sussex. Ref BN/142/20/OUT, dated 20 November 2020, was refused by notice dated 23 February 2021 for 200 dwellings.

There was no reason for refusal to the above application based on educational impacts for this development, which has now been approved at appeal. The WSSC Education response did not seek contributions for school infrastructure. Indeed, the response from WSSC recognised that the strategic development was providing the education infrastructure.

In determining the appeal, the Inspector considered education infrastructure and concluded: *“the appeal proposal would be subject to a CIL liability in terms of contributing to wider infrastructure needs such as health and education”*.

It is important that the Council makes consistent planning decisions. This has been established by caselaw⁵.

Conclusion

A reason for refusal based on the lack of a financial contribution towards secondary school provision cannot be sustained. The main reason for this is the lack of deficit in secondary school places in the appropriate secondary school catchment which is at 74% average capacity overall and 66% specifically at Ormiston Academy. The policy basis set out by WSSC has not considered correctly. Following objections at the Local Plan examination the relevant local plan policy (INF SP2) it was clear that contributions to the secondary school were to be sought only

³ R v. Plymouth City Council ex p. Plymouth and South Devon Co-operative Society (1994) 67 P.&C.R. 78.

⁴ Smyth v SSCLG [2013] EWHC 3844 (at paragraph 192 of the judgment of Patterson J.).

⁵ R (Matthew Davison) v Elmbridge BC [2019] EWHC 1409 (Admin) and (R(Lumba) v Secretary of State for the Home Department [2012] 1 AC 245 (at [26] & [34]).

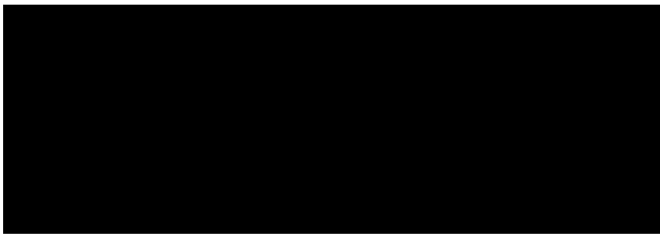
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from the strategic sites as other non-strategic sites would be CIL liable and there was a need to avoid double charging.

Any request for a financial contribution would fail both the tests of Section 106 of the 1990 Act and Regulation 122 of the CIL Regulations.

If the applicants were to execute planning obligations that (by reference to the both the factual and policy position) were unnecessary in order to make their development proposals acceptable, and those planning obligations were taken into account by the Council in deciding to grant planning permission, then there is a clear risk of challenge by third parties against the grants of consent, this is especially the case given the extent of local opposition to this proposal.

Yours sincerely



Lisa Jackson MA BSc MRTPI