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From: paul collins [REDACTED]

Sent: 15 November 2018 15:55

To: Karl Roberts; Neil Crowther; David Easton; Simon Davis; Liz Futchter; Cllr. Richard Bower; Cllr. Stephen Haymes; Cllr. Dawn Hall; Cllr. Ashvin Patel; Cllr. Phil Hitchins; Nigel Lynn; Cllr. Derek Ambler; Cllr. Jim Brooks; Planning.Responses

[REDACTED]
Subject: Y/44/17 OUT, Y/91/17 OUT, Y/92/17 OUT, Y/ and Pagham Planning applications P/140/16 OUT, P/134/16/OUT, P/140/16/OUT, P/6/17/OUT,, P/25/17/OUT

Importance: High

Dear All

For my sins I have watched the web casts of the Development Control Committee on 13/14th November 2018 in the light of the Officer reports and the minutes of the Development Control Committee on 24 October 2018 and have the following observations to make.

At the meetings on 24 October 2018 and 13 November 2018 there were clear breaches of the Council's constitution and the Planning Services Code of Conduct and the Committee was repeatedly and incorrectly told (amongst many other incorrect or inaccurate assertions) by officers and the Chairman that they could not debate the Local Plan allocations, or take into account other applications and matters not before the Committee, the Pagham applications under consideration had to be approved because the sites were allocated in the local plan and all relevant matters had been addressed by the Local Plan, that they could not depart from the Local Plan unless there were "some very good reasons" and that the only way to secure district wide infrastructure was to approve housing so that developer contributions could then be secured to pay for it (contrary to the CIL tests).

At the meeting of the Committee the next day on 14TH November the same members were told by the same Chairman that application Y/44/17 OUT was an urgent item because it was addressing the education requirements arising from the Strategic Allocation SD7 (Applications Y/91/17 OUT and Y/92/17 OUT which were not before the Committee) and by the related Officers report that although the proposals were in direct conflict with relevant policies in the Local Plan the proposals should be approved because (in effect) the conflict was minor and did not matter and that the gift of the education land in an effort to solve the problems of SD7 on that unrelated site (by ownership or policy) was a material consideration (no other legitimate material considerations were advanced)

capable of overriding such conflict and following a speech by Councillor Haymes (Chairman of Yapton Parish Council and ward member) saying much the same thing the application was duly approved subject to a S106 securing same as per the officer recommendation without debate.

For the record and as I have (as an interested party) previously recorded, the item was considered on the basis of clear and unequivocal breaches of the Council's constitution and the Planning Code of Conduct for Officers and members (yet again) and was yet another example of a decision made by this Committee unlawfully (There have been a number in the last 4 months since the ADLP was adopted). Furthermore the irrational decision making by this Committee (largely it seems to me et al led by the Chairman) and its total disregard for its legal responsibilities under Section 38 (6) of the Act and other legal provisions pertaining to S106 Agreements is not only plain to see but also astonishing given that no member (including the Chairman) is allowed to sit on the Committee without planning training.

It strikes me that on this performance alone, all members of the Committee (including the Chairman) and some Officers need to revisit that training and as part of that training they should be instructed (amongst a raft of other matters) in the implications of paragraphs 17, 18 and 19 *Tesco Stores Limited (Appellants) v Dundee City Council (Respondents) (Scotland) [2012] UKSC 13* (extract attached for your files).

Paragraph 17 states: ***"It has long been established that a planning authority must proceed upon a proper understanding of the development plan..... The need for a proper understanding follows in the first place from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails, to understand them"***.

Part of paragraph 18 states: ***"The development Plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers while allowing a measure of flexibility to be retained"*** and

part of paragraph 19 states: ***"As has often been observed development plans are full of broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse..... Nevertheless, planning authorities do not live in the world of Humpty Dumpty they cannot make the development plan mean whatever they would like it to mean"***.

In short whilst pragmatism has its place in planning it does not and cannot replace the statutory responsibility of a LPA to act within the law and the ends do not justify the means when those means are unlawful.

All of the foregoing is probably too late for poor old Yapton Parish Council because it is clear from the correspondence on these files that they have been dissuaded from their objections by the undeliverable promises of ADC regarding the limitation of future housing numbers in the parish, a say in how their parish will be developed and beguiled by land gift and other infrastructure inducements but ADC needs to be aware that (to their credit) Pagham Parish Council sees matters differently and are not so dissuaded or beguiled.

As you are aware I have repeatedly made it clear (on their behalf) that no decisions can lawfully be issued by ADC as a result of the Committee resolutions made by the Committee at its meetings on 24th October and 13th November due to a whole raft of material considerations that need to be reconsidered by the Committee before any such decisions are issued. With this in mind I have also asked when the decisions will be issued in respect of P/140/16 OUT and P/134/16 OUT and have been told by officers that the decisions will be issued once the S106 Agreements are signed (with signature imminent I am told) and that no public consultation will take place on those Draft agreements (despite material changes to heads of terms since they were considered at the Committee) and no referral back to Committee will take place. Once again I ask that Officers to confirm the date in each case when this will happen for future reference if required.

With this in mind please be advised that Pagham Parish Council considers that in the face of such illegality it has been left with no choice but to take legal advice with a view to undertaking JR proceedings in the event that any decisions are issued prior to a reconsideration of the applications by the DCC with the remedy sought being a quashing order in respect of any decisions issued. The grounds to be explored will be:

(a) Illegality

(i) Doing an act with no legal authority (simple illegality).

(ii) Misinterpreting/misunderstanding the law and policy governing the decision.

(iii) Failure to retain a discretion by:

(1) Improper delegation.

(2) Fettering of discretion by adoption of over-rigid policy.

(iv) Abuse of discretion:

(1) Using a power for an improper purpose.

(2) Taking into account irrelevant considerations and failing to take into account relevant considerations.

(b) Irrationality.

(c) Procedural Impropriety.

However if after due consideration you are able to confirm that no decisions will be issued on any of the Pagham applications until such time as the DCC do reconsider these applications, this will obviate the need to consider such proceedings so it is (I would suggest) in the public interest and the public purse for you to confirm that such a reconsideration will take place at the earliest opportunity and I invite you to do so by return. Obviously such a reconsideration can of course take place without the need for ADC to acknowledge or accept the claim that grounds for JR challenge exist and provided such reconsideration is undertaken lawfully, without any prior commitment to a different outcome.

Please put this e mail and attachment and any response on all the files listed for future reference if required.

Thank you

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RTPI

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