

[REDACTED]

From: paul collins [REDACTED]
Sent: 23 August 2018 15:35
To: Simon Davis; Neil Crowther; [REDACTED] Cllr. Stephen Haymes; Cllr. Richard Bower; Cllr. John Charles; Cllr. Derek Ambler; Karl Roberts
Subject: Y/44/17OUT, Y/91/17 OUT,Y/92/17 OUT and SD7

Dear Mr Davis

I refer to the e mail exchange between yourself and Mr James/Sykes (Agents) in respect of Y/44/17 OUT dated 15th and 20TH August (copy attached for clarity/ease of reference) which seems to have been triggered by my e mail representation dated 3/8/18 on the file. Therefore I thought I would complete the circle as the agents e mail does not address the issues I raised.

Ownership : The agents e mail on behalf of the applicant (Granite Gate Ltd) states: *"we can confirm that the adjacent site, subject of the previously approved Outline application Y/93/14/OUT and Neighbourhood Plan site allocation, is within the land ownership and control of the applicant"*. The forms submitted with outline application Y/93/14/OUT and the S106 Agreement and related deed of variations state that this is not the case and the application forms for the outline application Y/44/17 OUT state that this is not the case either. Who does and who does not own an application site is a material consideration because the LPA needs to be satisfied that the applicant has sufficient control over land necessary to deliver the development proposed subject to any conditions considered necessary and any S106 Obligations. Frankly, I am surprised that this issue has not been resolved sooner given that the application has now been under consideration by ADC for 14 months to date. I am also somewhat surprised that since it has been clear from the outset that access for the proposed development is entirely dependent on the implementation of OPP Y/93/14 OUT that the applicants have not discharged the relevant conditions on that OPP prior to its expiry if they did, as they now assert, have sufficient ownership and control over that site to do so. In these circumstances it is vital that the applicant provides the evidence to confirm that the applicant has sufficient control and ownership over the land necessary to develop the site in the manner proposed before any decision is made on the application.

Delivery of the access proposed: Y/44/17 OUT is an outline application for the development of the site with 70 dwellings and all matters except for access are reserved for later approval in the event that OPP is granted. As you are aware access forms part of the application and is not reserved and article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 defines access for these purposes as: 'Access' – the

accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.

The description of the application states “access to be achieved via permitted road (reference Y/93/14/OUT)” and Paragraph 2.8 of the Design and Access Statement (which does form part of the application) describes the proposed access as follows: *2.8 Vehicular, Pedestrian and Cycle Access: The vehicular access to the site will be from the northern site boundary through the approved development site (Y/93/14/OUT) leading on to North End Road. The already approved access point will provide good visibility to the east and west along North End Road. It is a suitable location for a vehicular access into the site in terms of traffic movement, safety and location.*

Detailed drawings are provided for the proposed access to Y/93/14/OUT and form part of the already approved planning application. There is a footpath within the approved development site which runs along the northern edge of the school building, which provides pedestrian access to North End Road. These access points and arrangements present a positive opportunity to improve the network of pedestrian and cycle routes in the immediate area and aid future permeability.

Y/93/14 OUT was an outline planning permission for 38 dwellings with all matters except for access reserved for later approval and it was subject to conditions and S106 obligations relating to access but the internal road layout was reserved for later approval and it cannot now be implemented. Therefore the applicant now needs to demonstrate how access as proposed in their application will now be provided in a satisfactory manner as the means by which this was originally proposed (i.e via the implementation of Y/93/14 OUT) is no longer available to them. Furthermore the ability of the previously approved access to serve 70 dwellings (as opposed to 38 dwellings) needs to be reassessed as do any off site highway contributions triggered by that scheme remain appropriate. Therefore this application should not and cannot be approved until these issues have been resolved.

The Primary School Issue: The last consultation response from WSCC on the file is dated 23/3/18 and it states that the applicant in this case should make provision for the payment of financial contributions calculated by way of standard formulae via a S106 Planning Obligation in order to address the education needs arising from the scheme. Paragraph 1.3 of the response states:

The contributions generated by this proposal shall be spent on small scale improvements at Yapton CofE Primary School.(and not the expansion of same)

The contributions generated by this proposal shall be spent on expansion at Ormiston Six Villages Academy.

The contributions generated by this proposal shall be spent on a restructure of the sixth form to cater for the additional student population at St Philip Howard Catholic High School Sixth Form.

We are aware that the developer will be entering into a separate agreement for the transfer of land to Yapton CofE Primary School at nil cost to the County Council.

Whilst the applicants offer to transfer land to Yapton CofE Primary School at nil cost is generous, Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind (PPG Paragraph 001 Reference ID: 23b-001-20161116) and that is not the case here. Therefore the transfer of such land is not (as the agents state) a material consideration in the determination of this application particularly as I note that the necessary planning permission for the use of such land and/or the development of such land by Yapton Cog E Primary School is not sought as part of their application and does not otherwise exist.

The agents also misrepresent the position regarding the relationship of their site to the implementation of SD7. Firstly, SEDP7 EIP PRIMARY EDUCATION REQUIREMENTS Final.pdf submitted by WSCC to the Examination of the ADLP in September 2017 states that the requirement arising from SD7 Yapton (400) and SD8 Ford(1500) is “Land and build costs for a 1FE primary school and a 2FE primary school because St Marys Clymping could not expand beyond the proposed expansion in relation to the 300 Dwellings proposed to be allocated in SD10 and Yapton only has capacity to expand by 0.5FE as per the guidelines in the Department for Education **Building Bulletin 103”

The relevant parts of SD7 as now adopted state: *Located to the south west of Yapton development proposals in the Strategic Allocation will provide at least 500 dwellings over the plan period. Development proposals must comply with the following key design and infrastructure requirements; a. provide a contribution towards new nursery and primary places education facilities or the improvement or expansion of the relevant existing facilities.*

Applications Y/91/17 OUT and Y/92/17 OUT seeking to implement the allocation state that this requirement is to be met by way of a financial contribution towards the expansion of Yapton CoE School onto the land that the applicant for Y/44/17 OUT generously intends to donate to the school. Whether or not the 3,500 sq m of land to be given to the School is sufficient to allow the School to expand so as to provide the new Nursery Places and 1FE/2FE primary school facilities to meet the requirements specified in Policy SD7 and whether or not the contributions generated are sufficient to meet the build costs for same (particularly given that the size of that scheme has now increased from 400 to at least 500 dwellings from when these were first calculated) remains to be determined as part of the consideration of those applications but it is certainly not true to say that an approval of Y/44/17 OUT *“enables the expansion of the Yapton Primary School”* so as to meet those requirements as the agents now assert particularly as no planning permission for same is sought or exists. Whether or not the development of Y/91/17 OUT and Y/92/17 OUT is policy compliant is a matter for those applicants to demonstrate and whether or not the applicants for Y/44/17 OUT have a role to play in that issue particularly as the applicants are unable to demonstrate that their scheme is policy compliant (see below) is not material to the determination of their application.

Furthermore whilst the background to the submitted application and the delays in the determination of the application are unfortunate they are not material to the determination of the application. Obviously if the applicants were aggrieved by such delays and the Council’s approach they could have exercised their rights to appeal against the Council’s failure to determine the application but they did not do so and as a matter of well-established case law applications must be determined on the basis of the development plan and HLS position as it exists at the date of the decision and not on the basis of the development plan as it stood when the application was submitted. The application has not yet been determined and a decision now and/or in October must be made in accordance with the development plan as it now exists unless material considerations indicate otherwise. (S38(6)). It is also a well-established case law principle that the previous resolution to grant permission at the DCC was not and is not the grant of a permission so that the application remains undetermined at this date.

The “efficacy” of the recently adopted ADLP and compliance with its Policies

“Efficacy” means “the ability to produce a desired or intended result”.

Policy SD7 specifically states that the desired or intended result is to develop that site with at least 500 dwellings in accordance with the requirements it specifies and whether or not Y/91/17 OUT and Y/92/17 OUT combine to describe a scheme that will deliver the desired or intended results has yet to be determined by ADC. It is true to say that in the event that it is found that those proposals do not meet or deliver the specified requirements in Policy SD7 and are approved anyway the efficacy of the Allocation would be in doubt. In the event, however, those proposals were refused because they do not deliver the stated requirements then the efficacy of the allocation would be enhanced.

Turning to the determination of Y/44/17 OUT it seems to me that the position is clear cut.

This proposed housing site is not allocated for development by the development plan and the site lies outside of the BUA boundary of Yapton as shown on the proposals map.(Paragraph 7.2.5 states that this boundary 1. defines those areas within which planning permission will normally be granted for new development, subject to the Local Plan policies, 2. enables the best use to be made of existing and future services,3. provides a useful tool to protect against inappropriate development, and 4. preserves the setting of existing settlements by protecting the surrounding countryside from unnecessary development)

The proposed site is therefore in the Countryside for the purposes of Policy C SP1 Countryside and is not one of the specified forms of development that will be permitted in such locations so that the development of this site would not be in accordance with this Policy in the up to date ADLP.

I note that the agents for the applicant assert that this site *“is absolutely essential to enable housing growth within the village” , “ clearly part of the Council's Housing Implementation Strategy that was carried into the Local Plan”* and that *“whilst the Council can demonstrate a 5.3 years of housing land supply, this is on the basis of provision of suitable windfall development such as development at the site in question and such provision of housing is required in the short term”* but with all due respect the adopted Local Plan (rightly or wrongly) and seek to argue that these are material considerations which indicate a decision otherwise than in accordance with the development plan. However such assertions and arguments are not tenable at this date.

The site is not within the village of Yapton (it lies outside the defined built up area), the site is not part of the HLS carried into the Local Plan and Policy H SP1 and supporting text makes it clear that the claimed existence of a 5.3 year HLS (for the period 2017 – 2022 as the supply for the period 2018 – 2023 has yet to be calculated) is based on those elements of the supply in Table 12.1 and sites which are situated outside of the defined BUA are not windfall for these purposes (windfall sites lie within the defined BUA) and should only be released for development (if required) by way of allocation through either the Non-Strategic Sites Allocation DPD underway or a review of the Yapton NP and not by way of ad hoc planning permissions. That is the purpose of an up to date plan led system. I also note that this is the approach that would be consistent with your Council's decision to refuse AL/115/17/OUT at the last DCC Meeting.

If I am wrong in these regards and ADC does intend to take an inconsistent approach perhaps ADC could advise me, Yapton PC and Landowners that this is the case because if such arguments are considered by ADC to amount to a case for allowing this application for the development of a site outside the BUA of Yapton with housing contrary to the development plan the same arguments can be used for any of the other Housing sites identified in the 2017 HELAA which lie outside of the BUA boundary, are not yet allocated and do not benefit from any OPP (These are NEWY20 (230 houses), NEWY23 (42 houses), 74a (40 houses), 17Y3 (9 houses) and NEWY16 (133 houses)) and for that matter any sites which are identified through the Call for sites process in 2018.

Not allowing this site now would not have any ramifications for the claimed housing land supply situation in the District in the ADLP as it does not form part of that claimed supply and whether or not this site (or others like it) is necessary to meet housing need remains to be assessed as part of the annual HLS assessment in accordance with the RNPPF but an approval now would undoubtedly compromise the ability of the ADLP and its Housing strategy to deliver the desired or intended results and therefore the efficacy of the ADLP. Furthermore, if the efficacy of the ADLP is in doubt as the agents in this case claim, the proper response would be for ADC to undertake a review or partial review of the Plan and not to grant a housing permission on an ad hoc basis as the agents in this case seek.

As you are aware the seemingly inevitable refusal of this application could take place under delegated powers far sooner than the October meeting and such a decision would also save officers time and expense in continuing to negotiate S106 and infrastructure matters which are not material to such a decision given the in principle objection to the scheme.

Please place this e mail on the relevant files referenced in the heading.

Thank you

Paul Collins BA (Hons) DipTP

