

ARUN DISTRICT COUNCIL

DEVELOPMENT CONTROL MEETING – 10 AUGUST 2016

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Subject: Planning Obligation associated with forthcoming inquiry for planning application WA/22/15/OUT

Report by : Neil Crowther

Report date: 5 August 2016

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EXECUTIVE SUMMARY

In completing the planning obligation prior to the called-in planning inquiry for application WA/22/15/OUT the Council has to be able to demonstrate that the requested obligations meet the legal tests contained within the CIL Regulations and the obligations, as agreed by development control committee and after taking legal advice, are not consider to do so.

RECOMMENDATIONS

It is recommended that:

Your committee approve S106 deed Heads of Terms for Leisure Payments to be spent at Arun Leisure Centre as per the original heads of terms (attached) and not pursue Leisure Payments to the Parish Councils.

Location: Land to the East of Fontwell Avenue Font well

Ref No: WA/22/15/OUT

Proposal: Outline application with some matters reserved to provide up to 400 No. new dwellings, up to 500 sqm of non-residential floorspace (A1, A2, A3, D1 and/or D2), 5000 sqm of light industrial floorspace (B1 (b)/(c)) & associated works including access, internal road network, highway works, landscaping, slected tree removal, informal & formal open space & play areas, pedestrian & cyclist infrastructure utilities, drainage infrastructure, car & cycle parking & waste storage. This application is a departure from the Development Plan & also lies within the parish of Eastergate.

## 1.0 BACKGROUND:

- 1.1 On 25 November 2015, planning application WA/22/15/OUT was presented to Development Control Committee. It included a full heads of terms document setting out the requirements to be included within an accompanying s106 agreement. Include within these heads of terms were contributions to be secured for Swimming Pools, Artificial Pitches and Sports Halls. The Committee resolved to approve the application but with the heads of terms being considered at the following meeting.
- 1.2 At the meeting on 16 December 2016, the committee considered the heads of terms and this included a response to the desire (of the committee) that some of the leisure related contributions be spent locally, The decision of the committee was to allow the Parish Councils (Eastergate & Walberton) to confirm how they would like to spend the money. Comments were invited and received from the Parish Councils.
- 1.3 In early 2016, the secretary of state called in the proposals and an inquiry is scheduled for November 2016. There is therefore a need to complete a legal agreement prior to the inquiry.
- 1.4 In response to the request of committee, Eastergate and Waberton Parish Council's have stated their desire to see the contributions spent on the following;

### Walberton Parish

- The provision of a multi-use games area (MUGA) large enough to incorporate a single tennis court and with floodlights for all year round use at a cost of £75,000.
- An all-weather surface for the current Walberton play area at a cost of £50,000.
- Provision of funds for maintenance of above at £15,000.

### Eastergate Parish

- Currently investigating upgrading of the major play area at the sports field on Barnham Road. This is likely to involve a separation of youngest children from older children and a piece of "youth" equipment to provide something for this age group as well. I anticipate proposals for this being provided over a period of 2-3 months with costings.

- 1.5 In preparing the Council's statement of case for the forthcoming inquiry, the Council's solicitor and acting counsel have expressed concern about the legal compliance of such requests. They consider that the requested contributions fail to meet the strict tests contained within the CIL Regulations.
- 1.6 The relevant regulation is CIL regulation 122(2) which states:

“(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.”

1.7 The view of the Council’s solicitor and acting counsel is that the requested contributions fail to comply with the CIL Regulations for the following reasons;

- To decide whether a financial contribution made by planning obligation complies with these tests, it is necessary to know how the contribution is going to be used. In particular, it is impossible to come to a proper judgement on tests (b) and (c) unless the decision-maker knows, at least in outline, the particular scheme or project which is to be supported.
- The requested contributions do not pass the tests within the CIL Regulations as they require contributions towards projects that are not yet specified and judgements as to whether those contributions comply with the Regulations is postponed until well after the planning permission has been granted. This is unlawful as a reason for granting planning permission.

1.8 The view of the applicant is the same as that outlined above and they are therefore not willing to accept the request for unlawful contributions and will make this case (should they have to) at the forthcoming inquiry.

**Background Papers:**

Development Control Committee Agenda Papers for 25 November 2015 and 16 December 2015.

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