

REPORT UPDATE

Application No: P/134/16/OUT

Location: Land north of Sefter Road & 80 Rose Green Road, Pagham

Description: Outline application for the development of up to 280 dwellings (including affordable homes), land for a replacement scout hut, land for an Ambulance Community Response Post Facility and land for either a 1FE primary school or care home. Provision of a primary vehicular access from Sefter Road and demolition of No. 80 Rose Green Road and creation of a pedestrian and emergency only access. Provision of Public Open Spaces including associated children's play areas, landscaping, drainage and earthworks. This application also falls within the parish of Aldwick.

UPDATE DETAILS

The application was determined by Members of the Development Control Committee on the 23rd January 2019 with Planning Permission having been resolved to be granted subject to completion of the s106 agreement in accordance with the officer's recommendation.

The application has been brought back for further consideration by Members in relation to the impact of the development upon non-designated heritage assets and consideration of the draft Pagham Neighbourhood Plan following publication under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012.

Consultation Response

A consultation response from received from the Council's Conservation Officer on the 19th July 2019. Below is a summary of the comments (please note the full consultation response is available on the Arun District Council website):

- The site contains a World War 2 (WW2) Infantry Section Post (ISP) in the west of the site, as well as the line of a former anti-tank ditch (which has subsequently been culverted).
- The ISP was likely to have been built as part of a wider anti-invasion plan, comprising static defence lines, to counter the danger of invasion after the defeat at Dunkirk in May 1940. It is considered that both the Infantry Section Post, and the anti-tank ditch were erected as part of the perimeter defences around Bognor Regis.
- The Bognor Advance Landing Ground was located c. 1km northwest of the site, which consisted of an airfield and tented camp used by the RAF. As identified in the Heritage Statement, the relationship of the infantry section post to this airfield is unclear; it may have been a means of defence against a possible attack on the airfield.
- It is considered that the proposed use of this parcel of land for some form of open space offers the opportunity to retain the asset as part of a sensitively designed

scheme. Such a scheme would allow the development to link in to the history of the local area, whilst maintaining an important heritage asset.

- The loss of the ISP has the potential to have a severe but localised negative impact on the WW2 Infantry Section Post. It is considered that, based on the current information, that this statement is supported.
- If demolition is ultimately considered to be necessary, the developer should prepare a full record of the asset for inclusion on the Historic Environment Record.

Non-designated heritage assets

The site features a World War 2 (WW2) Infantry Section post on the western-most portion of the site as well as the former anti-tank ditch which has subsequently been culverted. Whilst, the ditch is no longer visible, it appears to run in close proximity to the Infantry Section Post. The Infantry Post is considered to constitute a non-designated heritage asset.

Paragraph 197 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

It is identified within the heritage statement submitted in support of the planning application that the Infantry Section Post is likely to have been built as part of a wider anti-invasion plan, comprising static defence lines, to counter the danger of invasion after the defeat at Dunkirk in May 1940. It is considered that the Infantry Section Post and anti-tank ditch were constructed as part of the perimeter defences around Bognor Regis.

The heritage statement acknowledges that the loss of the Infantry Section Post has the potential to have a severe but localised negative impact. However, the indicative development proposals show that the Infantry Section Post will be situated within an area of open space, with this portion of the site not intended for residential development. The retention of this portion of the site as open space would offer the opportunity to retain the asset as part of a sensitively designed scheme. Such a scheme would allow the development to link in to the history of the local area through the retention of the non-designated heritage asset.

Therefore, it is considered that subject to the retention of the WW2 Infantry Section Post the proposed development would result in no harm to the significance of the non-designated heritage asset. As such the below Condition is recommended for inclusion with the decision notice:

The World War 2 Infantry Section Post shall be retained and prior to the commencement of development details of how it shall be made safe and secure shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To preserve the significance of the non-designated heritage asset in accordance with paragraph 197 of the National Planning Policy Framework.

Pagham Neighbourhood Plan

On 19th July 2019 the 'Pagham Development Management Plan 2019-2026' was published. The Plan contains four policies; one of which seeks to designate large parts of the strategic allocation in the Local Plan as Local Green Space. The PNP has been published under regulation 14 with the revised consultation period running until 5pm on the 31st August 2019.

Given the recent publication of the plan and its conflict with the NPPF the PNP can only be attributed exceptionally limited weight at this time. It must also be highlighted that the PNP in its current format is not considered to be in general conformity with strategic local policy (as set out below) in conflict with Paragraph 036 (Reference ID: 41-036-20190509) of the Planning Practice Guidance.

Neighbourhood Plans should not re-allocate sites that are already allocated through strategic plans and that the National planning policy states that it should support the strategic development needs set out in strategic policies for the area, plan positively to support local development and should not promote less development than set out in the strategic policies (see paragraph 13 and paragraph 29 of the National Planning Policy Framework). Nor should it be used to constrain the delivery of a strategic site allocated for development in the local plan or spatial development strategy." (Paragraph 044 Reference ID: 41-044-20190509).

Irrespective of the above conclusions on weight, it is necessary, in accordance with Section 70(2) of the Town and Country Planning Act 1990 (as amended), for the Local Planning Authority to consider the proposed developments compliance with the policies contained within the PNP so far as they are material to the application.

The National Planning Policy Framework (NPPF) under paragraph 48 identifies that Local Planning Authorities may give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the NPPF. Given the recent publication of the plan and its conflict with the NPPF the PNP can only be attributed extremely limited weight at this time. It must also be highlighted that the PNP in its current format is not considered to be in general conformity with strategic local policy (as set out below) in conflict with Paragraph 036 (Reference ID: 41-036-20190509) of the Planning Practice Guidance.

DM Policy 1 of the PNP states that major development will be permitted in Pagham where any application for such development is supported by sufficient evidence at the

date of submission to demonstrate that the development proposed will meet the social, economic and environmental objectives set out in the NPPF at paragraphs 8 and 9 and will meet the requirements of other policies in this plan. Therefore, the proposal accords with the requirements of DM Policy 1 of the PNP as at the time of submission the application was supported by the Sustainability Appraisal prepared in support of the Arun Local Plan which has been the subject of consideration at Examination in Public. It is also considered that the proposed will not conflict with DM Policies 2, 3 and 4 as set out below.

DM Policy 2 relates to Local Green Space and identifies that land shown on the Plan at Appendix 1, of the PNP, is designated as Local Green Space and all development proposed for land within this area will be considered inappropriate and will not be permitted unless specific criteria are met. The site the subject of this application is not identified on the Plan at Appendix 1 of the PNP and as such the proposed development will not conflict with DM Policy 2 of the PNP.

DM Policy 3 of the PNP identifies that major development in the plan area will not be permitted unless it can be demonstrated that significant harm to Pagham Harbour resulting from the development cannot be avoided through locating on an alternative site with less harmful impacts; that it can be demonstrated that the harm that it will cause to Pagham Harbour can be adequately mitigated or as a last resort compensated for by way of measures to be implemented; that proposals for major development that rely on and propose connection to the existing foul water sewer network that connects to Pagham Waste Water Treatment Works (WwTW) can demonstrate that there is sufficient capacity or that material considerations indicate otherwise. It is also stated that major development that proposes network reinforcement which will enable foul sewerage discharge to waste water treatment works located outside of the plan area will not be permitted unless it can be demonstrated at submission that such network reinforcement will be available before the development is occupied.

DM Policy 3 is not in general conformity with the Arun Local Plan and is also considered to conflict with paragraph 175 of the National Planning Policy Framework. A written submission prepared by the Secretary of State concerning the application of Paragraph 175 of the NPPF by order of Mr Justice Holgate in relation to Ground 4 of the judicial review (Claim No. CO/50/2019) concerning planning application P/140/16/OUT.

It was identified by the Secretary of State that the issue raised by the Claimant under Ground 4 (namely the failure to satisfy the 'mitigation hierarchy' set out in paragraph 175 of the NPPF) has already been resolved against the Claimant by the Courts in R (Buglife) v Thurrock TGDC [2009] EWCA Civ 29 and R (Prideaux) v Bucks CC [2013] EWHC 1054 (Admin).

It was submitted by the Secretary of State that the judgements in these cases are directly applicable to the construction of paragraph 175(a) of the NPPF. Therefore, paragraph 175(a) is not to be read as if it were a statute imposing a strict, sequential hierarchy, where a decision-maker is required artificially to close its mind to mitigation when considering whether the development would cause significant harm to biodiversity. A common-sense approach should be adopted, as set out in Buglife and Prideux. This is consistent with the Courts' general approach to the interpretation of policy, namely that a measure of flexibility must be applied in the construction of planning policy and a legalistic approach to the interpretation of policy must be avoided.

It was further highlighted in the Secretary of State's submission that when considering if a development would result in significant harm to biodiversity for the purposes of paragraph 175(a), a decision-maker is entitled to take into account mitigation. Mitigation is not to be taken into account only if it has been shown that there are no alternative sites on which the development could be located.

Therefore, DM Policy 3 conflicts with the intentions of paragraph 175(a) of the NPPF. In the determination of this application the appropriate assessment has shown that significant harm to biodiversity, through increased recreational disturbance and water quality impacts, can be avoided (and not just reduced or minimised) through mitigation. With mitigation having been considered there would be no "significant harm to biodiversity". As such, where significant harm to biodiversity could be avoided through mitigation the decision-maker is not obliged by Paragraph 175(a) to consider whether the development could be located on an alternative site with less harmful impacts.

As such, the proposed development is acceptable and appropriate mitigation can be secured through appropriately worded conditions and s106 obligations.

DM Policy 4 states that development within the plan area will not be permitted unless and until it has been demonstrated that the transport, social, environmental and economic infrastructure that is necessary to make the development acceptable in planning terms will be delivered within the plan area before the development proposed is anticipated to be occupied. This policy has failed to take into consideration that the planning impact of the development upon transport, social, environmental and economic infrastructure can be properly addressed through the use of conditions and s106 contributions with appropriate triggers. Given the trigger points identified the impact of development will be adequately mitigated.

Therefore, the publication of the Pagham Neighbourhood Plan whilst a material consideration does not result in any amendment to the original recommendation and decision of the Local Planning Authority.