

REPORT UPDATE

Application No: P/25/17/OUT

Location: Church Barton, Horns Lane, Pagham

Description: Outline application with all matters reserved - Erection of up to 65 No. dwellings, access roads, landscaping, open space & associated works.

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.

Pagham Neighbourhood Plan

Officers confirmed to Pagham Parish Council on 18 July 2019 that this application was to be presented to Committee. On 19 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. However, the land identified within the PNP at Appendix 1 incorporates the entirety of Strategic Allocation SD1 (Pagham South) and as such the proposed policy (within the PNP) conflicts with policy H SP2a of the Arun Local Plan. Therefore, the policy proposal is not in general conformity with strategic local policy as specified by Paragraph 036 (Reference ID: 41-036-20190509) of the Planning Practice Guidance.

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 Prideaux. 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 States 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 officer's recommendation.