

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF DEVELOPMENT CONTROL COMMITTEE ON 9 OCTOBER 2019

PART A : REPORT

SUBJECT: DETERMINATION OF P/134/16/OUT

REPORT AUTHOR: Neil Crowther, Group Head of Planning

DATE: September 2019

EXTN: x 37839

PORTFOLIO AREA: Planning

EXECUTIVE SUMMARY:

Planning application P/134/16/OUT was resolved to be granted planning permission at the meeting of the Development Control Committee (DCC) in November 2018. At the Development Control Committee meeting on 4 September 2019 the Officer report presented additional material considerations that the Committee were required to consider before a decision could be issued. The Committee resolved not to determine application P/134/16/OUT. Instead, the application was deferred for three reasons. This report will comment upon each of those reasons.

RECOMMENDATIONS:

The recommendation remains the same as set out in the officer report of 4 September 2019.

‘That delegated authority is granted to the Group Head of Planning for the completion of the Section 106 agreement, substantially in accordance with the Heads of Terms previously approved by Members of the Development Control Committee on the 13th November 2018, and to grant planning permission subject to the S106 Agreement and Conditions and Informatives as set out in the attached recommendation sheet.’

BACKGROUND:

1. Planning application P/134/16/OUT was resolved to be granted planning permission at the meeting of the Development Control Committee in November 2018. At the Development Control Committee meeting on 4 September 2019 the Officer report presented additional material considerations that the Committee were required to consider before a decision could be issued. The Committee resolved not to determine application P/134/16/OUT. Instead, the application was deferred for three reasons. This report will comment upon each of those reasons.

Under Local Plan Policy HER SP1 to convey to the developers that the Committee wishes to see the WW2 Infantry Section Post as a non-designated heritage asset retained and made safe and confirmation and details thereof to be brought back for consideration by a future Development Control Committee meeting.

2. As the Group Head of Planning advised at the previous meeting, the Committee is perfectly entitled to seek amendments to any planning condition that Officers propose, and it was not necessary to defer the application in order for a condition to be re-worded. Officers have proposed an amended condition (to the condition proposed within the report of 4 Sept 2019) in response to the reasons for the deferral. This condition achieves what the deferral reason has sought.

Prior to the commencement of development, a statement shall be submitted which will provide details of how the WW2 Infantry Section Post will be retained on site and integrated as part of the proposals. The development shall be carried out in accordance with the approved statement, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To preserve the significance of the non-designated heritage asset in accordance with Policy HER SP1 of the Arun Local Plan and paragraph 197 of the National Planning Policy Framework and to ensure that the historic building feature is protected and preserved.

3. The applicant has confirmed that they accept such a condition and the details, when submitted, will be presented to DCC at a future date.
4. In a response to a question, the Officer made reference to a potential situation whereby we may be asked to consider financial viability issues around the retention of the ISP. This was given as an example of an issue that may come up at a future date. It was not given as a reason that Officers were promoting in any way for the removal of the ISP. There were a number of comments made by members expressing concern that financial reasons were being promoted by Officers and should not be part of proposal so there was some obvious confusion about officer advice being given.

Work with Pagham Parish Council on the Pagham Development Management Plan to positively evaluate and establish how this may be integrated with Arun's Local Plan, particularly in respect of Pagham Policy DM4 relating to Transport, Environmental and Economic Infrastructure, and to report back on progress thereof for consideration by a future Development Control Committee meeting.

5. Section 38(6) of Planning & Compulsory Purchase Act requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. To re-confirm, the relevant development plan in this instance is only the adopted Arun Local Plan and this was the situation when the application was resolved to be approved in November 2018. This, by law, is required to be what your committee has to determine the application against.

6. Part 8, Section 6 of the Constitution confirms that members will comply with the requirements of Section 38(6) of the Planning & Compulsory Purchase Act 2004.
7. The Committee are required to determine applications in accordance with these legislative requirements at the time that they are presented to them. In November 2018, the application was properly determined against the requirements of the development plan. The current Officer report also reflects this statutory requirement.
8. The emerging Pagham Neighbourhood Plan (NP) is not part of the development plan. Officers have concluded that it is also not a material consideration that any weight should be attributed to in the determination of the proposals at this time. This accords with the guidance in the NPPF.
9. Section 70(2) of the 1990 Town & Country Planning Act (as amended by the Neighbourhood Planning Act 2017) requires a Council, when making a decision, to have regard to *“a post-examination draft neighbourhood plan, so far as material to the application.”* As the Pagham Neighbourhood Plan is not a post-examination draft neighbourhood plan your committee (in accordance with legislation) should not have regard to it under this legislation.
10. It is unreasonable to fail to determine an application in order to progress a future emerging policy that has no weight and is unknown in evidence or timescale. This applies doubly so in this instance where the policies referred to are policies that have failed to progress.
11. The functions of the DCC is set out in Constitution. They are to determine applications pursuant to Schedule 1 of the Town & Country Planning Act 1990. This Schedule does not relate to matters of planning policy formulation. It is not a function of the Development Control Committee to consider the preparation of planning policies. A report on progressing a Neighbourhood Plan policy cannot be considered by this Committee in accordance with the Council’s Constitution.
12. National planning guidance confirms that Neighbourhood Plan’s should not conflict with strategic policy. They –

‘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).
13. Paragraph 13 of the NPPF states *‘Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.’* Further, para 29 states *‘Neighbourhood plans should not promote less development than set out in the strategic policies for the area or undermine those strategic*

policies.'

14. Policy DM4 of the emerging NP is in direct conflict with Policy INF SP1 of the Arun Local Plan. It is strategic in nature (as it seeks to place additional burdens on the delivery of strategic development as it specifically defines infrastructure that is associated with strategic development) and, as such, the Council have rightly raised an objection to this policy. This policy has no weight.
15. As a Neighbourhood Plan cannot (in accordance with the legislation) deal with strategic policy, failing to determine this application in order to allow a NP to progress is in direct conflict with policy and policy guidance because there are no circumstances where a NP policy will be progressed where it seeks to deal with strategic issues (as draft policy DM4 of the Pagham NP does) that are contained in the Local Plan. The policy should be deleted as there is already a policy in the Local Plan that deals with the delivery of infrastructure associated with strategic development. The only way the NP policy could be 'integrated' with the Local Plan would be to repeat the policy in the Local Plan, which would be unnecessary.
16. The Committee came to the conclusion that they should not determine the application in order to allow time for the Neighbourhood Plan to progress. Concluding therefore that determining the application was premature pending progress on the Neighbourhood Plan.
17. Failing to determine the application on the grounds of prematurity is in direct conflict with Para 50 of the National Planning Policy Framework. This states that prematurity '*will seldom be justified where a draft plan has yet to be submitted for examination; or – in the case of a neighbourhood plan – before the end of the local planning authority publicity period on the draft plan..... the local planning authority will need to indicate clearly how granting permission for the development concerned would prejudice the outcome of the plan-making process.'*
18. As confirmed by the Group Head of Planning at the previous meeting, the Council has offered support to all Neighbourhood Plan groups in the preparation of Neighbourhood Plans. Officers have corresponded with Pagham PC during 2018 and 2019 when they notified us of their intention to progress a new Plan. However, it was their decision not to engage with Officers prior to the publication of the Reg 14 Neighbourhood Plan and Officers were therefore obliged to comment upon what had been submitted. Should they wish to progress their Neighbourhood Plan and wish to seek support from ADC Officers, then that support will be available. This has already been confirmed in writing.
19. Under no circumstances is the emerging Neighbourhood Plan of material weight sufficient to provide a reason for not determining the application in accordance with the development plan as per the decision of the Council in November 2018.
20. Finally, and perhaps most importantly, application P/25/17/OUT was also considered by the DCC on 4 September 2019. This was also a strategic development site in Pagham with exactly the same Neighbourhood Plan issues. The Committee resolved to grant planning permission for this scheme and did not defer it for the same reasons as P/134/16/OUT. This is clearly an inconsistent

decision as the officer report on this issue contained exactly the same Neighbourhood Plan issues for consideration. There was a recorded vote.

21. The decision taken on P/25/17/OUT is now an important material consideration in the determination of P/134/16/OUT. There is no reason why the Neighbourhood Plan should be an issue with one of these applications and not an issue with the other.
22. The advice given by the Group Head of Planning and the Council's Solicitor at the previous meeting remains and it is unreasonable and unlawful to decide not to determine in order for progress to be made on a NP.

Produce a report for consideration by the Committee on any material considerations and new information that have arisen since the resolution to grant on 13 November 2018 in respect of Local Plan Policies T SP1, H SP2, SD SP1, ENV DM1, ENV DM2, ENV DM5, W DM2, QE SP1 and QE DM3.

23. The report presented to DCC on 4 September 2019 included all new material considerations that have arisen since November 2018 and that report is available as a background paper. All relevant policies have been considered by the Council when they resolved to grant planning permission in November 2018.
24. The Committee should only deal with the matters that are relevant at the time. It was very concerning that the comment that **'there is potential new information that has not emerged yet. That information will be firmed up and there will be more to come'** was made when a deferral on this reason was promoted. The failure to determine an application for a matter that has not yet even emerged and is not yet before the Committee is plainly unreasonable.
25. Again, application P/25/17/OUT was considered by the DCC on 4 September 2019 and this application was not deferred for this reason. It was resolved to be granted planning permission. There is no reason why this issue should apply to P/134/16/OUT and not P/25/17/OUT. The decision taken on P/25/17/OUT is now an important material consideration in the determination of P/134/16/OUT.

CONCLUSION

26. It is worth noting the comment of Mr Justice Sullivan in his judgment in Kings Cross Railways Lands Group v London Borough of Camden in 2007. He stated

"If a Local Planning Authority which has decided only 8 months previously, following extensive consultations and very detailed consideration, that planning permission should be granted is unable to give a good and, I would say, a very good planning reason for changing its mind, it will probably face an appeal, at which it will be unsuccessful, following which it may well be ordered to pay costs on the basis that its change of mind (for no good planning reason) was unreasonable."

In reaching a different decision to that in November 2018, the Council would only be reasonable in doing so if there were 'very good planning reasons.'

27. Where decision takers choose not to comply with the NPPF, where it is a material consideration, the NPPG recognises that clear and convincing reasons for doing so are needed (Paragraph: 006 Reference ID: 21b-006-20190315).

28. For the reasons set out in paras 8 - 25 of this report, there are no 'very good planning reasons' that apply. To summarise;

- In accordance with legislation, your committee should not have regard to the emerging Neighbourhood Plan.
- The Constitution does not allow your committee to consider policy formulation.
- In accordance with legislation, the policy in the emerging Neighbourhood Plan has no weight and cannot progress.
- In accordance with national policy, prematurity cannot be a reason for not determining the application.
- There is no stated reason why issues in respect of the emerging Neighbourhood Plan and material circumstances did not apply to P/25/17/OUT and do apply to P/134/16/OUT.

29. The Council has already reached a decision on this application in November 2018. There are no material changes that make this decision unsound and in need of re-consideration. The Officer report of 4 September 2019 comprehensively dealt with those matters that needed consideration and your Committee has more than enough evidence at this time to take a decision on these matters.

30. I provide the above in order to assist you in making robust decisions with the benefit of advice from your professional officers.

31. A contrary decision would be open to challenge by way of judicial review for being irrational and unreasonable. This opens the Council up to significant financial and resource costs, bad publicity, complaints and potential code of conduct complaints.

2. PROPOSAL(S):

Recommendation contained within Officer report to 4 Sept 2019 Development Control Committee agenda.

3. OPTIONS:

n/a

4. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		x
Relevant District Ward Councillors		x
Other groups/persons (please specify)		x

5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)

	YES	NO
Financial		x

Legal	x	
Human Rights/Equality Impact Assessment		x
Community Safety including Section 17 of Crime & Disorder Act		x
Sustainability		x
Asset Management/Property/Land		x
Technology		x
Other (please explain)		x

6. IMPLICATIONS:

The implications for failing to determine the applications could be significant.

Should the applicant appeal against non-determination Officers consider that there would be no sound reason that could be put forward as to why the Council has failed to determine the application.

Should the Council decide to refuse planning permission for the application, it would be exceptionally difficult to defend and explain why, when other applications within the Pagham strategic allocation have been granted planning permission within the same policy context. There is no known evidence that would support this position.

Further, if the decision is legally challenged, then the Council would have an exceptionally weak defence to explain why it has failed to determine.

7. REASON FOR THE DECISION:

In order to take a sound decision of the planning application.

8. BACKGROUND PAPERS:

Development Control Committee Agendas

4 September 2019

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