

PLANNING APPLICATION REPORT

REF NO:	P/1/21/PL
LOCATION:	Land at Summer Lane Paghham
PROPOSAL:	Material change of use of land from agricultural use to use for open space. This application is in part a Departure from the Development Plan, affects a Public Right of Way & is in CIL Zone 5 (Zero Rated) as other development.

<b>SITE AND SURROUNDINGS</b>
------------------------------

DESCRIPTION OF APPLICATION	<p>The application seeks planning permission for a material change of use of land from agricultural use to use for open space. The applicant has stated that "planning permission is sought for the use of the land for the purposes of public recreation" and that "no operational development, engineering operations or landscaping are proposed as none are necessary in order to effect the change of use". The applicant has stated that public access would be via existing accesses.</p> <p>No details have been submitted to show how the intended open space would be laid out, or precisely how it would be delivered. The applicant has confirmed that they do not own the site.</p> <p>No operational development is proposed so there would be no earth moving, setting out of the land or upgrading of rights of way through this application. A further application would be required for these elements. The applicant has stated that they expect the delivery of open space to come about by Arun District Council through s106/CIL contributions.</p>
SITE AREA	Approximately 11.7 hectares.
TOPOGRAPHY	Predominantly flat.
TREES	There are some trees to parts of the site boundaries but none would be affected by the proposed change of use.
BOUNDARY TREATMENT	No proposed change to existing treatments.
SITE CHARACTERISTICS	<p>The site area covers a large swathe of land which consists of the following elements:</p> <ul style="list-style-type: none"> <li>- Open fields in agricultural use;</li> <li>- A Public Right of Way (FP100);</li> <li>- A building site consisting of cleared open land with some open storage of construction materials/equipment;</li> </ul>

The site is adjacent to the built up area boundary of Pagham and west of Pagham Road. Additional agricultural land is situated to the west of the application site, with the Pagham Harbour situated further to the south-west. A further Public Right of Way (PROW), runs north/south along the western boundary of the site.

**CHARACTER OF LOCALITY**

Despite its relatively close proximity to Pagham the site has a rural feel owing to the large expanse of open countryside to the west. However, existing development is also present to the east of Pagham Road and on parts Summer Lane. There is also Church Barton House and farm to the west of part of the site. To the north, the application shares a boundary with a mobile home park.

**RELEVANT SITE HISTORY**

P/70/19/RES	Approval of reserved matters following outline consent P/58/15/OUT for 90 No. dwellings. Also seeking to address the terms of planning conditions 6 (Phasing), 8 (ecology), 9 (Surface Water), 12 (Vehicular Access), 15 (Parking), 18 (Travel Plan), 20 (Landscape Management), 24 (Parking Control), 25 (Dwelling Parking) and 26 (Materials).	ApproveConditionally 28-02-20
P/140/16/OUT	Outline application for access only - mixed use development comprising of up to 400 dwellings, a care home with up to 70 beds, a Local Centre comprising up to 2000sqm of A1/A2/A3/D1/sui generis floorspace, provision of land for a 1FE primary school (with sufficient space to ensure that it is expandable to 2FE), provision of land for a scout hut, safeguarding of land to help link the site to the Pagham Harbour Cycle Route & other community uses including public open space & allotments with some matters reserved.	App Cond with S106 22-11-18
P/58/15/OUT	Outline application with some matters reserved for the erection of 90 No. dwellings with associated access & open space. This is a Departure from the Development Plan.	App Cond with S106 30-09-16

**REPRESENTATIONS**

Pagham Parish Council stated "No objection".

As of 12/02/21, three letters of support have been received on the following grounds:

- (1) The application preserves much needed land for sustainable drainage and climate change mitigation;
- (2) It would provide natural green space;
- (3) The land is not suitable for housing and should be considered as Public Open Space; and
- (4) If the application is refused, the conditions in the supporting statement should be met.

The Council has also received an objection from the developer of the "Land North of Summer Lane" site which raises the following points:

- (1) The applicant owns none of the land and notice has not been served on the Langmead family as landowners;
- (2) The applicant states that notice was served on Drew Smith but this was never received;
- (3) As such, the application should be held back until the correct legal procedures have been followed;
- (4) The proposed change of use is not in accordance with the Development Plan when read as a whole;
- (5) Extant planning permissions for residential development on the Application site already provide for a generous level of new public open space (7.92 hectares across P/58/15/OUT & P/140/16/OUT);
- (6) There is no credible evidence to suggest that the determining policies in this case are out of date or silent on the question of development on the Application site. In fact, the Development Plan is very clear as to the allocation of much of that site for housing;
- (7) The site area includes land with lawful planning permissions for residential dwellings, one of which has already been lawfully commenced;
- (8) Approval of this application would conflict with these earlier permissions;
- (9) Significant ground works have already taken place on part of the land and residential development is well underway. Any planning permission for such a change of use would not be capable of lawful implementation;
- (10) Any decision to grant permission for the proposed change of use to open space would set a confusing and unhelpful precedent at a time when there is a pressing need for housing in such sustainable locations; and
- (11) There is not access for use of the whole site as open space for the purposes of public recreation.

#### **COMMENTS ON REPRESENTATIONS RECEIVED:**

Comments noted.

<b>CONSULTATIONS</b>
----------------------

#### **CONSULTATION RESPONSES RECEIVED:**

NATURAL ENGLAND - any comments to be reported at the Meeting.

WSCC HIGHWAYS - no objection. State that:

- There is limited information submitted in terms of the exact nature of the open space for which permission is sought;
- It is nevertheless broadly accepted that the land could be used for different purposes under the open space definition;
- In any case, the expectation would be for the land to be used by those residents local to it;
- Therefore, the potential highways & transport implications would be very limited;
- The land forming part of the application does not adjoin any public highway but a public right of way follows Summer Lane;
- The permission of WSCC Highways would not be required to construct any access onto the un-adopted

section of Summer Lane; and

- Recommend a condition requiring details of access to the open land areas for maintenance purposes.

ADC DRAINAGE ENGINEERS - any comments to be reported at the Meeting.

ADC LANDSCAPE OFFICER - any comments to be reported at the Meeting.

COUNCILS ECOLOGIST - no objection subject to conditions to ensure that any new lighting is bat friendly, to ensure that hedgehogs are protected during any site clearance/construction & then that hedgehog boxes are provided on the land and to ensure that any works to trees take place outside of the nesting season.

#### COMMENTS ON CONSULTATION RESPONSES:

Comments noted except where indicated below

COUNCILS ECOLOGIST - It is not possible to impose a condition to protect birds nests as this is covered by separate legislation and would therefore fail to meet the 6 tests as per para 55 of the NPPF.

#### POLICY CONTEXT

The application site is designated on the Policies Map of the Local Plan as part of a Strategic Housing Allocation - SD1 Pagham South. It is also part countryside and part within the Built Up Area Boundary. The key policies that apply to the site are H SP1, H SP2 and H SP2a.

Other relevant designations are as follows:

Within 2km of Bognor Reef SSSI;

Within 2km of Pagham Harbour SSSI;

Pagham Harbour Zone B;

Part of a designated Biodiversity Opportunity Area;

Part of the north western corner of the site area north of Summer Lane is in Flood Zone 3a; and

It is predicted that a greater part of the site area will be Flood Zone 3a by 2111.

#### DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

ENVSP1	ENV SP1 Natural Environment
ENVDM1	ENV DM1 Designated Sites of Biodiversity or geographical imp
ENVDM2	ENV DM2 Pagham Harbour
ENVDM5	ENV DM5 Development and biodiversity
GISP1	GI SP1 Green Infrastructure and Development
HSP1	HSP1 Housing allocation the housing requirement
HSP2	H SP2 Strategic Site Allocations
HSP2A	HSP2a Greater Bognor Regis Urban Area
HWBSP1	HWB SP1 Health and Wellbeing
OSRSP1	OSR SP1 Allotments
OSRDM1	Protection of open space, outdoor sport, comm& rec facilities
SDSP1	SD SP1 Sustainable Development

SDSP1A	SD SP1a Strategic Approach
TDM1	T DM1 Sustainable Travel and Public Rights of Way
TSP1	T SP1 Transport and Development

**PLANNING POLICY GUIDANCE:**

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

**POLICY COMMENTARY**

The Development Plan consists of the Arun Local Plan 2011 - 2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

On the 24th June 2020, the "Pagham Development Management Plan 2019-2026" was published under regulation 14. It is therefore necessary, in accordance with paragraph 48 of the NPPF, to have regard to this draft Neighbourhood Plan as a material planning consideration. However, the weight to be attached to the Plan is a matter of judgement for the decision maker. These policies are considered in the report's conclusions.

**DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered not to comply with relevant Development Plan policies because it would fail to bring forward the housing allocation and the full range of associated infrastructure allocated to that site.

Section 70(2) of Town and Country Planning Act 1990 (as amended) provides that

- (2) In dealing with an application for planning permission the authority shall have regard to -
- (a) the provisions of the development plan, so far as material to the application,
  - (aza) a post-examination draft neighbourhood development plan, so far as material to the application,
  - (b) any local finance considerations, so far as material to the application, and
  - (c) any other material considerations.

**OTHER MATERIAL CONSIDERATIONS**

It is material that planning permission already exists for the development of two parts of the site area with residential development (amongst other items). Furthermore, on one of these two areas, development has been implemented and the site cleared. A third area of the site also already has permission as a large formal area of Public Open Space with the layout & features of this already set by P/58/15/OUT & P/70/9/RES.

## CONCLUSIONS

The proposal the subject of this application gives rise to two main issues. These are:

1. Whether the proposed change of use constitutes a departure from the development plan and, if so, whether material considerations in this particular case indicate that the plan should not be followed; and
2. Whether safe and suitable access to the site can be achieved for all users.

The Development Plan:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is required to be considered in preparing the development plan and is a material consideration in planning decisions.

In assessing this proposal, the Arun Local Plan (ALP) is the only element of the development plan to provide relevant policies.

The application site is designated on the Policies Map of the ALP as part of a Strategic Housing Allocation - SD1 Pagham South and also part inside the Built-up Area Boundary. The key ALP policies that apply to the site are H SP1, H SP2 and H SP2a. ALP policy H SP1 sets out the overall provision of at least 20,000 new homes phased over the plan period. The policy allocates 400 units to the strategic housing site SD1 Pagham South. This is part of the overall strategic strategy of the Local Plan.

ALP policy H SP2 requires that development proposals within the Strategic Site Allocations be comprehensively planned and to have regard to a masterplan endorsed by the Council for the respective areas which incorporates high quality imaginative design giving a sense of place and a permeable layout.

ALP policy H SP2a focusses on the "Greater Bognor Regis Urban Area" including Pagham (both SD1 Pagham South and SD2 Pagham North). The policy sets out key design and infrastructure requirements for the two Pagham strategic allocations. The principle of the development of the site SD1 has been established by the grant of two outline planning permissions.

Outline planning permission with details of access (P/140/16/OUT) was granted on 22 December 2018 for "a mixed use development comprising of up to 400 dwellings, a care home, a primary school and other uses on land south of Summer Lane, Pagham.

Outline planning permission with details of access (P/25/17/OUT) was granted on 5th September 2019 for "erection of up to 65 No. dwellings, access roads, landscaping, open space & associated works" on land at Church Barton, Horns Lane, Pagham. It should be noted though that the area of application P/1/21/PL does not include the land associated with the Church Barton permission.

The principle of the development of this site has been established by the grant of these two outline planning permissions which together secure permission for 465 homes and the applicants for the above applications have clearly shown a commitment to deliver strategic housing on these sites in accordance with the adopted local Plan strategic strategy.

The proposed change of use of the land to use for open space would be in direct conflict with policies H SP1, H SP2 and H SP2a as it would prevent the delivery of housing and the full range of associated infrastructure allocated to the site. The applicant has acknowledged that the proposed use of this land

would be in conflict with these policies.

Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. The local planning authority cannot demonstrate a five year supply of deliverable housing sites. The Authority Monitoring Report published in December 2020 indicates that there is a 3.3-year land supply. Therefore, paragraph 11d of the Framework is engaged.

This leads on to paragraph 11(d)(ii) and the test of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposed change of use has the potential to deliver some social benefits through the provision of open space that will support the health and well-being of the existing community (policies HWB SP1, OSR DM1 & OSR SP1). It has the potential to offer some environmental benefits through the protection and enhancement of the natural environment and adaptation to climate change (policies ENV SP1, GI SP1 & ECC SP1). However, it would not provide economic support for local facilities and services, or employment through the construction of dwellings. Fundamentally, it would fail to ensure that a sufficient number and range of homes can be provided to meet the needs of both present and future generations. These are the adverse impacts of granting permission, which are considered to significantly and demonstrably outweigh the benefits, particularly when assessed against the policies in the Framework taken as a whole.

Paragraph 59 of the NPPF states that "To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay". The strategy in the ALP and the grant of outline planning permissions (P/140/16/OUT & P/25/17/OUT) are entirely consistent with the aim in the NPPF of boosting significantly the supply of housing.

The proposed change of use is entirely counter to these policies and guidance. It would, if implemented, prejudice implementation of the Local Plan housing strategy and would be contrary to the NPPF taken as a whole. Granting this permission and seeking to obstruct the delivery of strategic housing on site will result in an even greater shortfall in housing land supply in the District and the increased need to find other housing sites elsewhere in the District; sites that will be speculative and where strategic infrastructure cannot be planned.

It is important to note that the presumption in favour of sustainable development is a presumption of policy only and, even if the presumption applies, it does not displace the requirement to apply section 38(6) of the Planning and Compulsory Purchase Act 2004. The proposed change of use constitutes a departure from the development plan and there are no material considerations in this particular case of sufficient weight to indicate that the plan should not be followed.

As set out above, it is necessary, in accordance with paragraph 48 of the NPPF, to have regard to the emerging Paghham Neighbourhood Plan as a material planning consideration. Policy 1 is relevant as this proposes to include the extent of the application site north of Summer Lane into the Built Up Area Boundary (BUAB). This includes but goes beyond the boundaries of the Drew Smith (P/70/19/RES) site. Policy 2 reaffirms that the remainder of the site area is countryside. Policy 6 proposes all of the application site area south of Summer Lane as Local Green Space. Notwithstanding, it is considered that the weight to be given to the emerging Plan should be exceptionally limited due to the stage of its preparation and the objections received in response to it.

Access to the site:

The supporting statement accompanying the application states: "No operational development,

engineering operations or landscaping are proposed as none are necessary in order to effect the change of use of the land proposed and public access to same would be via Summer Lane part of which (being that part outside of the application site shown on the location plan) is an adopted Highway and surrounding public footpaths and no changes to that highway or Summer Lane generally would be needed to serve the recreational land use proposed."

ALP policy T SP1 seeks to ensure that development "...provides safe access on to the highway network; contributes to highway improvements and promotes sustainable transport, including the use of low emission fuels, public transport improvements and the cycle, pedestrian and bridleway network".

Additionally, ALP policy T DM1 begins: "New development must ensure ease of movement, prioritising safe pedestrian and cycle access to the green infrastructure network and access to public transport and community transport services where a need has been identified. Access to alternative modes of transport including public transport services, the public right of way and cycle networks, must be available and accessible to all members of the community."

Paragraph 108(b) of the NPPF requires proposals to ensure that safe and suitable access to the site can be achieved for all users.

The Arun Design Guide Supplementary Planning Document (SPD) January 2021 states that, "A successful movement framework should be easily accessible by all including the young, elderly and those with movement difficulties; and should encourage healthy and sustainable choices, making it as easy to walk, cycle, horse ride or take public transport as it is to drive".

The area of the site north of Summer Lane is currently open to both the western and southern boundaries (where there are existing footpaths) and as such people could walk onto the land albeit that they would have to cross raised ground and drainage ditches. Part of this area is also currently secured as a building site preventing access.

The area of the site to the south of Summer Lane is currently part a building site (the land associated with the formal POS being provided by Drew Smith) and part farmland. Similar constraints exist for access onto this land (raised field margins/ditches). There is also hedging along part of the site boundaries.

It is also noted that Summer Lane (west of the existing dwelling Meadow Sweet) is private to vehicles. The same is true of Horns Lane (which leads from Summer Lane to Church Barton Farm) and there is no public footpath along Horns Lane either. WSCC Highways request that details be provided of access for maintenance purposes and it is not clear how this can be provided.

Given the nature of the existing limited means of access described above and the absence of any proposed improvements, it is concluded that the proposal will not provide safe and suitable access to the site for all users, contrary to ALP policies T SP1 & T DM1, Paragraph 108(b) of the NPPF and Part F of the Arun Design Guide SPD.

Other Matters:

Planning permission has been granted to develop the land for housing and any approval for alternative uses could not take away that permission. Any alternative permission would simply mean that the landowner has two permissions which could be implemented. The application has served notice on Drew Smith as owners of the land associated with permissions P/58/15/OUT and P/70/19/RES but no notice has been served in respect of the owners of the Pagham South strategic site or the land between the western edge of the Drew Smith site and the western boundary of the site. According to the letter



from Drew Smith, the rest of the freehold of the land is owned by the Langmead Family. If the applicant accepts that incorrect notices have been served, the application would need to be deferred from this agenda to allow these to be served correctly.

Additionally, the granting of permission would not mean that the site becomes allocated open space. Only a development plan could allocate the site as open space and it would need to be in use as open space for such a designation allocation to be made.

It is not considered that the proposed change of use would result in any significant harm to site biodiversity although the increase in footfall across what are currently part open agricultural fields would require mitigation measures to be sought to off set impacts from disturbance on local habitats. However, there would be no negative impact to Pagham Harbour or the nearby SSSI's. The risk of current and future flooding is noted but as no built development is proposed it is not necessary to make an assessment versus the relevant flood risk policies.

The applicant acknowledges the existing permissions on the site and states 'the applicant and the author of this statement remain cognisant that whilst you can lead horses to water you cannot make them drink so that they are prepared to pursue the grant of a planning permission as sought via the Planning appeal system should this, regrettably, prove necessary.'

**HUMAN RIGHTS ACT**

The Council in making a decision, should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (Right to respect private and family life), Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of permission in this case interferes with applicant's right to respect for their private and family life and their home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of neighbours). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for refusal is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

**DUTY UNDER THE EQUALITIES ACT 2010**

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

**RECOMMENDATION**

REFUSE

- 1 The proposed change of use of the land to use for open space does not accord with policies H SP1, H SP2 and H SP2a of the Arun Local Plan 2011-2031 and would prejudice delivery of the Local Plan housing strategy, contrary to paragraph 59 of the National Planning Policy

Framework.

- 2 The proposal fails to provide safe and suitable access to the site for all users, contrary to policies T SP1 and T DM1 of the Arun Local Plan 2011-2031, paragraph 108(b) of the National Planning Policy Framework and part F of the Arun Design Guide Supplementary Planning Document January 2021.
- 3 **INFORMATIVE:** Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and determining the application within a timely manner, clearly setting out the reason(s) for refusal, allowing the Applicant the opportunity to consider the harm caused and whether or not it can be remedied by a revision to the proposal. The Local Planning Authority is willing to meet with the Applicant to discuss the best course of action and is also willing to provide pre-application advice in respect of any future application for a revised development.

## BACKGROUND PAPERS

[The documents relating to this application can be viewed on the Arun District Council website by going to https://www.arun.gov.uk/weekly-lists and entering the application reference or directly by clicking on this link.](https://www.arun.gov.uk/weekly-lists)

**P/1/21/PL - Indicative Location Plan (Do not Scale or Copy)**  
**(All plans face north unless otherwise indicated with a north point)**



Based on the Ordnance Survey mapping with permission of the Controller of Her Majesty's Stationery Office © Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Arun District Council 100018487. 2015