

ARUN DISTRICT COUNCIL

REPORT TO AND DECISION OF FULL COUNCIL ON 14 JULY 2021

SUBJECT: CONSIDERATION OF PETITION RELATING TO DEVELOPMENTS IN PAGHAM

REPORT AUTHOR: Karl Roberts, Director of Place
DATE: 30 June 2021
EXTN: 37760
AREA: Planning

EXECUTIVE SUMMARY:

The Council has received a petition seeking the revocation of four approved outline planning permissions within the Parishes of Pagham and Aldwick.

This report provides the Council with all the necessary information to decide whether this is a course of action the Council wishes to take. The conclusion drawn in the report is that there is no sound planning reason (not expedient) to revoke any of the planning permissions referred to, having regard to the development plan and other material considerations. To do so would have significant financial implications for the Council which is a material consideration.

RECOMMENDATIONS:

It is recommended that the Council:

- 1) Resolves not to consider further the revocation of planning permission P/25/17/OUT as it does not appear to the local planning authority that it is expedient to revoke or modify this permission to develop land;
- 2) Resolves not to consider further the revocation of planning permission P/140/16/OUT as it does not appear to the local planning authority that it is expedient to revoke or modify this permission to develop land;
- 3) Resolves not to consider further the revocation of planning permission P/134/16/OUT as it does not appear to the local planning authority that it is expedient to revoke or modify this permission to develop land; and
- 4) Resolves not to consider further the revocation of planning permission P/30/19/OUT as it does not appear to the local planning authority that it is expedient to revoke or modify this permission to develop land.

1. BACKGROUND:

- 1.1 The Council has received a petition seeking the revocation of four approved outline planning permissions within the parishes of Pagham and Aldwick.
- 1.2 A statement setting out 'The case on behalf of the petitioners' is appended as Appendix A along with a briefing paper on revocation produced by the House of Commons library at Appendix B.
- 1.3 The petition is now being considered by Full Council because after several submissions the petition has now reached the required 1500 signatures to trigger a Full Council debate.
- 1.4 Full Council has the option to consider the matter now based on the information available, ask for additional information or refer it to a Committee to consider the matter further. It is recommended that Full Council deals with the matter now.

APPLICATIONS

- 1.5 The details of each application are set out below. A copy of the relevant decision notice and main Committee report for each and a plan showing the four sites is appended as Appendix C.
- 1.6 **P/25/17/OUT** - Outline application with all matters reserved - Erection of up to 65 No. dwellings, access roads, landscaping, open space & associated works. – Church Barton House.
- 1.7 **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. – Land south of Summer Lane and west of Pagham Road.
- 1.8 **P/134/16/OUT** - 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. – Land north of Sefter Road.
- 1.9 **P/30/19/OUT** - Outline application with some matters reserved for the construction of up to 300 No. new homes, a care home of up to 80 beds, D1 uses of up to 4,000 sqm including a 2 form entry primary school, the formation of new means of access onto Hook Lane & Pagham Road, new pedestrian & cycle links, laying out of open space, new strategic landscaping, habitat creation, drainage features & associated ground works & infrastructure. – Land north of Hook Lane.

SUMMARY OF ISSUES

1.10 As the statement at Appendix A indicates, once approved, the Council as the Local Planning Authority (LPA) has no power to simply withdraw a permission unilaterally without the payment of compensation. The power to revoke planning permissions comes in the form of Section 97 of the Town and Country Planning Act 1990 (as amended).

1.11 Subsection 1 requires the LPA to address the following:

“If it appears to the local planning authority that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part, the authority may by order revoke or modify the permission to such extent as they consider expedient.”

1.12 In determining whether it is expedient to exercise this power subsection 2 requires that the decision maker undertake the following:

“In exercising their functions under subsection (1) the authority shall have regard to the development plan and to any other material considerations.”

1.13 If the LPA decides that in respect of Section 97(1) it is not expedient to revoke the referenced permissions then this process stops here. If, however, the Council decides that it is expedient to consider the revocation of the referenced permissions further then Full Council is invited to set out its reasons so this can be minuted and will form the basis of the Council’s position in any further proceedings. Given the potential significant financial implications of any decision to revoke any of the planning permissions listed the Council should have regard to the advice of the Interim S151 Officer on the financial implications before any final decision is made to make an order(s).

1.14 Section 98(1) of the same Act deals with cases where any order is objected to. In such a case "an order under section 97 shall not take effect unless it is confirmed by the Secretary of State".

1.15 Furthermore, the validity of an order made under Section 97 may be questioned by application to the High Court within six weeks of its confirmation by the Secretary of State, under section 288(3) of the 1990 Act.

1.16 In terms of the issue of compensation this is governed by section 107 of the Town and Country Planning Act 1990. The relevant sections state:

(1) Subject to section 116, where planning permission is revoked or modified by an order under section 97, then if, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the land or in minerals in, on or under it -

(a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or

(b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority shall pay that person compensation in respect of that expenditure, loss or damage.

(2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3) Subject to subsection (2), no compensation shall be paid under this section in respect—

(a) of any work carried out before the grant of the permission which is revoked or modified, or

(b) of any other loss or damage arising out of anything done or omitted to be done before the grant of that permission (other than loss or damage consisting of depreciation of the value of an interest in land).

(4) In calculating for the purposes of this section the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted -

(a) subject to the condition set out in Schedule 10, for any development of the land of a class specified in paragraph 1 of Schedule 3;

(b) for any development of a class specified in paragraph 2 of Schedule 3.]

(5) In this Part any reference to an order under section 97 includes a reference to an order under the provisions of that section as applied by section 102(3) (or, subject to section 116, by paragraph [1(3)] of Schedule 9).

1.17 The legal advice that officers have received on this matter confirms that the loss in the value of the land would be potentially included in determining the scale of any potential compensation. The petitioners' statement would appear to take a contrary view.

1.18 As the statement on behalf of the petitioners helpfully advises the Committee (and Full Council) are entitled to take into account the compensation the Council might have to pay. Lord Carnwath in the Supreme Court in case R. (Health and Safety Executive) v. Wolverhampton City Council [2012] 1 WLR 2264, said:

“In simple terms, the question is whether a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, is entitled to take into account the cost to the public of so doing. Posed in that way, the question answers itself. As custodian of public funds, the authority not only may, but generally must, have regard to the cost to the public of its actions, at least to the extent of considering any case whether the cost is proportionate to the aim to be achieved, and taking into account more economic ways of achieving the same objective.”

THE CONSIDERATION OF THE CASE FOR REVOCATION

- 1.19 The petitioners’ full case is set out in the document at Appendix A.
- 1.20 Statements from parties representing each of the four sites is appended at Appendix D. Whilst the underlying assessment required is very similar for all the permissions referred to, Councillors must consider each permission, the assessment relating to that permission and each recommendation separately.
- 1.21 In considering whether it is expedient to revoke any or all of the four planning permissions the Committee is invited to initially consider what the development plan says about these four sites.
- 1.22 Firstly, Policy H SP1 states that the Council’s housing requirement for the plan period of 2011 to 2031 is 20,000 new homes. The same policy goes on to state which sites are allocated as strategic housing sites and the number of units expected from each.
- 1.23 Site SD1 is described as Pagham South and should deliver 400 homes and SD2 is described as Pagham North and should deliver 800 homes.
- 1.24 Secondly, Policy H SP2 sets out the criteria by which each site allocation should be assessed to achieve a comprehensively planned form of development.
- 1.25 Thirdly, Policy H SP2a sets out a more detailed policy environment for both sites SD1 and SD2.
- 1.26 Fourthly, any other Local Plan references to these site allocations or the general locality are made in the context of delivering at least this quantum of development in these locations. None of the sites in question are shown as ‘green Infrastructure on any plans linked to policy GI SP1.
- 1.27 The Local Plan was never subject to legal challenge after it was adopted in July 2018 and, therefore, regardless of whether any party agrees or not with its content it remains until it is replaced in whole or in part as the development plan for this area and should therefore be afforded the legal status offered to adopted development plans in statute.
- 1.28 The revocation process is not the appropriate mechanism for seeking to amend the Local Plan.

- 1.29 Each of the four outline planning permissions were granted consent by this Committee pursuant to this policy context. One of these decisions was challenged in the courts but the challenge was rejected. Any further potential for challenge on either procedural matters or judgements made has long since passed.
- 1.30 One of the implications of revoking one or all of the permissions is that this will worsen the Council's five-year land supply position. The Council is already in a position where it does not enjoy a 5 year supply of housing as required by the National Planning Policy Framework and also is not delivering new homes at the required pace as per the Housing Delivery Test, and therefore as a result the LPA is required to consider any application that is submitted against the presumption in favour of sustainable development at NPPF 2019 Paragraph 11 and the policies in the Framework. Whilst, it is not automatic that planning permission would be granted for development on non-allocated sites there appears to be very little planning logic in making matters worse by seeking to revoke planning permission for a total of 1045 homes, plus two care homes, the former of which represents just over one year of the Council's total annual required housing supply¹.
- 1.31 Furthermore, should the permissions be revoked it would not change the status of the Local Plan and so each proposal could be resubmitted for consideration and determination with the existing Local Plan and its policies as the basis for its determination plus the added the presumption in favour of sustainable development from the at NPPF Paragraph 11d. Any refusal of a resubmitted application would of course be subject to appeal and based on the above there is a very significant likelihood that planning permission(s) would be granted with potential for costs to be awarded against the Council for unreasonable behaviour. Also, there is no guarantee that the infrastructure secured through each of the permissions via a section 106 agreement would be of the same scale and value. It would all need to be considered afresh.
- 1.32 Therefore, even for those who are opposed to these developments in principle there is very little (if any) planning merit in pursuing the revocation of these permissions.
- 1.33 Any objection to the revocation of the permission(s) would trigger a requirement for the matter to be considered by the Secretary of State. What form that might take is unknown at this time, but should it be a Public Inquiry then there are cost implications associated with such a course of action.
- 1.34 Finally, in terms of paying compensation for any revocation the petitioners representative suggests that any compensation would be limited. However, based on the legal advice received it is considered that the loss in the value of the land should be taken into account. Based on an approximation of £50k per plot then a combined total of 1200 homes would potentially leave a compensation bill of £60million. The cost of individual planning permissions would be lower. In support of this position Members are invited to review the Alwick case study referred to on page 15 of the House of Commons Briefing Paper (appendix B).

¹ Based on 1000 homes representing an average year of the required Local Plan delivery.

2. PROPOSAL(S):
 2.1 As the report has established there are many matters which are common to all the applications. Overall, the conclusion drawn is that there is no sound planning reason to revoke any of the planning permissions referred to, having regard to the development plan and other material considerations.

3. OPTIONS:
 3.1 For Full Council to revoke any or all of the planning permissions referred to having regard to the development plan and other material considerations.
 3.2 For Full Council not to revoke any of the planning permissions referred to (this is the recommended option).

4. CONSULTATION:

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		X
Relevant District Ward Councillors		X
Other groups/persons (please specify) – owners/developers of sites	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:
Financial Implications:
 Members are advised in the report that, it is not expedient to revoke or modify any of the 4 Planning Permissions. Additionally, the report advises Members that compensation to the landowners would be in the region of £60m (based on their own estimates set out in the appendices).

Members must note as a material consideration that a decision to revoke any of the planning permissions carries a critical financial risk to the sustainability of the Council's finances. The Council does not have sufficient revenue resources to pay £60m or any other sum in compensation. To put the sum into context, the General Fund Balance is £7m and the Council Tax income for the District is £11.995m for 2021/22 and Council Tax increases are effectively capped at 2%. The Council has no other resources that can be used as capital resources, even if they were available, they cannot be used for this purpose. The action would make a Section 114 Notice inevitable.

Legal Implications:

This report adequately sets out the legal framework for the decision before Full Council. There are three steps in this framework based on the question "Does it appear expedient to revoke or modify any of the Planning permissions"?

To answer this question, Members have to have regard firstly to the Development Plan. The report sets out officer advice on why having regard to the Development Plan it is not expedient to revoke or modify the permissions.

Secondly, Members have to also consider if there are any other material considerations other than the development plan which make it expedient or not to revoke or modify the planning permissions. One material consideration is a financial consideration. For this Members have to be guided by the report (and its appendices) and the comments of the Section 151 Officer. It is clear from these that there will be a substantial claim for compensation and that in the absence of third-party contribution the Council does not have the resources to meet such compensation claims. Failure to take this into account would be challengeable as being unreasonable

Thirdly, a decision to revoke has to be conditional on the drafting of a Revocation Order for consultation with those interested in the sites before the Order can be confirmed at a subsequent Full Council meeting.

It is anticipated that further legal advice will be given to Members at the meeting.

7. REASON FOR THE DECISION:

That the Council resolves not to consider further the revocation of any planning permission as it does not appear to the Local Planning Authority that it is expedient to revoke or modify this permission to develop land.

8. BACKGROUND PAPERS:

- Appendix A - Statement "The case on behalf of the petitioners"
- Appendix B - Briefing Paper on Revocation produced by the House of Commons Library
- Appendix C - Plan indicating four sites
- Appendix D - Statements from parties representing each of the four sites