THE CASE ON BEHALF OF THE PETITIONERS

Executive Summary

The Petitioners have rights regarding their Petition enshrined in the Council's Petition Scheme and Constitution

The Petitioners have submitted a Petition containing 2000+ signatures in accordance with the due procedures which requests that the Full Council of Arun District Council give consideration to the revocation of the extant but unimplemented outline planning permissions P/25/17 OUT, P/140/16 OUT, P/134/16 OUT and P/30/19 OUT at its meeting on 17 March 2021.

Having regard to the relevant legislation, the circumstances of these OPPs. the development plan and all other material considerations (including the issue of compensation that may or may not become payable) the Petitioners consider that ADC is legally entitled to revoke the OPPs cited and that it would be expedient for Arun District Council to revoke some or all of the OPPs cited and the Petitioners reasoning for these conclusions are set out in the remainder of this report.

The Right to Petition and be heard by the Full Council of Arun District Council

The Petitioners rights regarding their Petition are enshrined in the Council's Petition Scheme approved by Full Council on 8 January 2014 https://www.arun.gov.uk/download.cfm?doc=docm93jijm4n1035.pdf&ver=649 and Section 7 of the Council's Constitution https://www.arun.gov.uk/download.cfm?doc=docm93jijm4n15477.pdf&ver=15904

Paragraph 5.1: If a petition contains more than 1,500 signatures it will be debated by the Full Council unless it is a petition asking for a senior council officer to give evidence at a public meeting[1]. This means that the issue raised in the petition will be discussed at a meeting which all councillors can attend. The Council will endeavour to consider the petition at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting.

This Petition contains 2000+ signatures and it was formally submitted to the Council in the prescribed form on 8 February 2021 and the scheduled Full Council meeting that meets the requirement in the Constitution is 17 March 2021.

What the Petition Seeks

The purpose of the petition is to ensure that the Full Council of Arun District Council give consideration to the revocation of the extant but unimplemented outline planning permissions P/25/17 OUT, P/140/16 OUT, P/134/16 OUT and P/30/19 OUT.

[1] This is not such a petition

What the Full Council must consider when considering Revocation

Once approved, planning permission grants development rights on the land. The local planning authority has no power simply to withdraw a permission unilaterally without the payment of compensation.

In England and Wales the local planning authority has the power to revoke planning permission under section 97 of the Town and Country Planning Act 1990 (as amended) which states:

97 Power to revoke or modify planning permission

(1) 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.

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

(3) The power conferred by this section may be exercised—

(a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) where the permission relates to a change of the use of any land, at any time before the change has taken place.

(4) The revocation or modification of permission for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

(5) References in this section to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority.

(6) Part II of Schedule 5 shall have effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under this section which revokes or modifies permission for development—

(a) consisting of the winning and working of minerals; or

(b) involving the depositing of refuse or waste materials.

Where there is an objection to a revocation order being made, section 98(1) states that "an order under section 97 shall not take effect unless it is confirmed by the Secretary of State".

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.

In England and Wales the rules relating to compensation where planning permission has been revoked are set out in section 107 of the Town and Country Planning Act 1990. There is a liability for a local authority to pay compensation in respect of:

• Expenditure rendered abortive by the order (e.g. expenditure on preparation of plans for the purposes of works); and

• For any other loss or damage directly attributable to the revocation or modification.

Section 107(3) of the Act makes clear that compensation is not payable in relation to any works carried out before the planning permission (which is being revoked by the order) was granted.

Section 107 reads as follows:

107 Compensation where planning permission revoked or modified

(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).

In July 2012 the Supreme Court ruled that when local planning authorities are deciding whether or not to revoke or modify a planning permission they are entitled to take into account the compensation they could 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 Case for Revocation on behalf of the Petitioners

Meeting the Legal Requirement for Revocation

All the subject outline planning permissions are extant, all involve building operations and changes of use which have not yet commenced on site (lawfully or otherwise) so that it is legally possible for Arun District Council to revoke or modify the permissions **under section 97 (1) of the Town and Country Planning Act 1990 (as amended)** and the Petitioners consider that it would be expedient for Arun District Council to do so for the following reasons.

The Relevant Development Plan Policies for the purposes of section 97 (2) of the Town and Country Planning Act 1990 (as amended)

The Arun District Local Plan 2018 was adopted on 18 July 2018 and the policies of most relevance for these purpose are Policies GI SP1 Green Infrastructure and development, Policy H SP1 The Housing Requirement, Policy H SP2 Strategic Site Allocations, Policy H SP2a Greater Bognor Regis Urban Area, Policy ENV DM2 Pagham Harbour and Policy INF SP1 Infrastructure provision and implementation which can be viewed here https://www.arun.gov.uk/adopted-local-plan

The subject Outline Planning permissions were granted as departures from these relevant development plan policies for the reasons set out in the table overleaf:

Permission Reference	The departures
P/25/17 OUT & P/140/16 OUT	• Both sites are allocated as Green Infrastructure for the purposes of Policy G1 SP1 and these proposals for 465 dwellings and related built development would (if implemented) result in the loss of circa 27 hectares of green infrastructure contrary to the intent of Policy GSP1 • Policy HSP1 allocates the site of these permissions (SD1 Pagham South) for 400 dwellings to be built/completed by 2025/26 with development commencing on site with 50 being built in 2018/19 whereas the permissions granted are for 465 dwellings with development commencement unknown but not predicted to commence until 2025/26 earliest and the housing not being completed until after the end date of the adopted Plan (2031) • Neither of the outline planning permissions granted accord with Policy HSP2 as neither demonstrate that they have been comprehensively planned or with regard to a masterplan endorsed by the Council (there is no such masterplan) and neither alone or in combination demonstrate that they will meet the key requirements specified in the Policy • Policy H SP2a Greater Bognor Regis Urban Area allocates the site the subject of these OPPs as SD1 Pagham South for 400 dwellings on the basis that it would *"!support the sustainable growth of Bognor Regis"* and goes on to describe how Development proposals will need to meet a number of specified key design and infrastructure requirements: but there is no evidence that the permissions granted would in fact support the sustainable growth of Bognor Regis or meet the specified key design and infrastructure requirements. • Policy ENV DM2 Pagham Harbour requires that all housing proposals in Zone B (which includes the sites of these OPPs) make developer contributions towards the agreed strategic approach to access management at Pagham Harbour and create easily accessible new green spaces for recreation within or adjacent to the development site and these OPPs would make the contributions but do not create accessible new green spaces over and above that required to meet the needs of the occupiers of the residential properties proposed. • The separate S106 Agreements relating to each of the OPPs do not make provision for infrastructure to be provided in accordance with the terms of Policy INF SP1 Infrastructure provision and implementation
P/30/19 OUT & P/134/16 OUT	• Both sites are allocated as Green Infrastructure for the purposes of Policy G1 SP1 and these proposals for 580 dwellings and related built development would (if implemented) result in the loss of circa 30.9 hectares of green infrastructure contrary to the intent of Policy GSP1 • Policy HSP1 allocates the site of these permissions (SD2 Pagham North) for 800 dwellings to be built completed by 2029 with development commencing on site with 50 being built in 2018/19 whereas the permissions granted are for 580 dwellings only with development commencement unknown but not predicted to commence until 2025/26 earliest and the housing not being completed until after the end date of the adopted Plan (2031) • Neither of the outline planning permissions granted accord with Policy HSP2 as neither demonstrate that they have been comprehensively planned or with regard to a masterplan

	endorsed by the Council (there is no such masterplan) and neither alone or in combination demonstrate that they will meet the key requirements specified in the Policy • Policy H SP2a Greater Bognor Regis Urban Area allocates the site the subject of these OPPs as SD1 Pagham South for 400 dwellings on the basis that it would "!support the sustainable growth of Bognor Regis" and goes on to describe how Development proposals will need to meet a number of specified key design and infrastructure requirements: but there is no evidence that the permissions granted would in fact support the sustainable growth of Bognor Regis or meet the specified key design and infrastructure requirements. • Policy ENV DM2 Pagham Harbour requires that all housing proposals in Zone B (which includes the sites of these OPPs) make developer contributions towards the agreed strategic approach to access management at Pagham Harbour and create easily accessible new green spaces for recreation within or adjacent to the development site and these OPPs would make the contributions but do not create accessible new green spaces over and above that required to meet the needs of the occupiers of the residential properties proposed. • The separate S106 Agreements relating to each of the OPPs do not make provision for infrastructure to be provided in accordance with the terms of Policy INF SP1 Infrastructure provision and implementation

A local planning authority may depart from development plan policy where material considerations indicate that the plan should not be followed, subject to any conditions prescribed by direction by the Secretary of State. This power to depart from development plan policy is confirmed in article 32 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

In cases where a local planning authority intends to depart from development plan policy, article 15(3) of the Development Management Procedure Order sets out the publicity requirements which must be followed before the decision is taken.

In these cases I can find no record of the material considerations that existed to justify the LPA departing from the development plan when these decisions were taken and no record that the LPA followed the publicity requirements which had to be followed before the decisions were taken.

The Relevant material considerations for the purposes of section 97 (2) of the Town and Country Planning Act 1990 (as amended)

The Out of date development plan Policies

Arun District Council has publically declared that the housing Policies HSP1, HSP2, and HSP2a on which these permissions relied when granted are out of date and that a review of the Arun local Plan 2018 has now commenced because the Plan has (as a whole) failed to demonstrate and will fail (as written) to maintain a 5 year Housing Land supply.

As a result all and any applications made pursuant to and seeking to implement these OPPs (including applications for approval of reserved matters) will be required to be considered and determined by ADC against the presumption in favour of sustainable development at NPPF 2019 Paragraph 11 d and the policies in the Framework rather than against the out of date development plan policies[2].

Therefore it is material to consider that even if these sites could be developed in accordance with the relevant development plan policies cited and the terms of their respective OPPs and S106 Agreements ADC now has no ability to ensure that this is the case because applications made pursuant to the OPPs will have to be determined against different criteria and policies.

It is also material to consider that the existence of these unimplemented and undeliverable[3] OPPs will prejudice the ability of ADC to identify and provide a 5 year supply of deliverable sites as part of the ongoing Local Plan Review and/or review whether or not it remains appropriate to meet district wide housing needs in Pagham in the light of new and more up to date evidence now available.

New Evidence

New evidence includes the changing policies of the neighbouring authority Chichester District Council (which now intends to meet its own housing requirements), the changing Policies of West Sussex County Council as the relevant Education and Highway Authority, new evidence provided by the relevant drainage authorities (EA, SWS and WSCC as the Lead Local Flood Authority) and the changing policies of Natural England regarding the protection of Pagham Harbour, the NPPF 2019[4] and the ongoing Pagham Neighbourhood Plan process.

In this regard it should be noted that the Petitioners do not say that a revocation of these OPPs will necessarily result in a change to the adopted Local Plan policies (as only a properly conducted Local Plan review can achieve that aim) but do say that such a revocation would enable the Local Plan review underway to proceed in a properly conducted manner.

The Petitioners also do not say that revocation is the only manner in which the principle of developing these sites in the manner proposed in these OPPs can be reconsidered as it is

---

[2] https://www.gov.uk/guidance/national-planning-policy-framework/2-achieving-sustainable-development and footnotes 6 and 7.

[3] Deliverable sites are defined in the NPPF 2019, To be considered deliverable To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years. In particular:
a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within 5 years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within 5 years.

[4] The Local Plan 2018 was prepared and adopted on the basis of Government Policy in the NPPF 2012 and not that in the NPPOF 2019 which changed government policy significantly.

always open to the landowners and/or the site promoters to make fresh applications to be submitted for their sites so that such matters can be reconsidered but they currently show no alacrity to do so.

The Petitioners also acknowledge that revocation would not mean that the landowners and/or the site promoters could not make fresh applications for the development of their respective sites so that such reconsideration could take place but only that a revocation would mean that they have to do so if they wish to continue with their proposals.

Compensation issues

The Petitioners acknowledge that the compensation payable is a material consideration when determining whether or not planning permissions should be revoked. (See above)

However it is considered important for the Council to note the following points when considering this matter.

Firstly the landowners would have a right of objection to any revocation orders issued and the Orders and those objections would then be heard by the Secretary of State who is then charged with confirming or not the orders made and if and only if the Secretary of State confirms the Orders is the issue of compensation then settled by ADC by way of any claim made.

In the case of these OPPs it is currently unknown whether or not the separate landowners involved would in fact object to any revocation orders agreed and made and if so which landowners and which OPPs would be affected by those objections. It is possible that some or all of the landowners may decide that a more beneficial and pragmatic course of action (from their point of view) would be to focus on making fresh applications for their sites so that they could then negotiate fresh planning permissions and S106 Agreements that would be more capable of lawful implementation and more quickly than those that currently exist.

In such circumstances no claims for compensation would arise from those that proceed in that way.

Therefore the Petitioners acknowledge that it would be right and proper for the Council to give consideration to individual revocation orders in respect of each of the OPPs cited and that the Council may consider it expedient to revoke some but not all of the OPPs cited.

In this regard it is important for the Council to note that Compensation is only payable where the claimant can demonstrate that they have (a) 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[5].

In the case of P/25/17 OUT and P/140/16 OUT there is currently no evidence that the landowners have incurred any expenditure that could or would be subject to a claim.

[5] Section 107 of the Town and Country Planning Act 1990 (as amended)

In the case of P/30/19 Out and P/134/16 Out there is some evidence that the landowners may have incurred some limited expenditure that may or might be subject to a claim but this would need to be demonstrated and would be likely to be limited at this date and certainly not at levels that could not be entertained by Arun District Council within normal budgetary procedures.

In view of the compensation issues the Petitioners acknowledge that it is important and in everyone's interests that ADC determine whether or not they do intend to revoke the OPPs cited and if so the necessary action is taken quickly so that further abortive expenditure and therefore compensation claims are avoided.

Paul Collins BA (Hons) Dip TP - 15 February 2021