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VIA EMAIL

20928/A3/HH/sjo

12 May 2021

Dear Karl

**REVOCATION OF PAGHAM OUTLINE PLANNING PERMISSIONS PETITION
LETTER OF OBJECTION: TAYLOR WIMPEY UK LIMITED**

We act on behalf of Taylor Wimpey UK Limited and write to object to the petition to seek to revoke Outline Planning Permission refs. P/25/17/OUT, P/140/16/OUT, P/134/16/OUT and P/30/19/OUT.

The site at Land North of Sefter Road, Pagham is current subject to extant Outline Planning Permission (ref. P/134/16/OUT) and is within Taylor Wimpey's land ownership. A Reserved Matters application is currently pending consideration by the Council for the following description of development:

Application for the approval of Reserved Matters pursuant to condition 1 (Reserved Matters details), condition 6 (Design Code Masterplan) & condition 7 (landscaping & layout details) following the grant of P/134/16/OUT for the erection of 250 No. dwellings, (including affordable homes), replacement scout hut, land for an Ambulance Community Response Post Facility, demolition of No. 80 Rose Green Road & provision of Public Open Spaces including associated children's play areas, landscaping, drainage & earthworks.

Reasons for Objecting

Our reasons for raising an objection to the revocation of the aforementioned Outline Planning Permissions are set out fully below, but in summary include the following matters:



- The sites have been allocated by the Council within the Local Plan and their respective and cumulative feasibility for residential-led development has been scrutinised by the Local Plan Inspector during the course of the Local Plan Examination process and have been found to be sound.
- There is no reasonable basis for revocation of the aforementioned Outline Planning Permission when considered against Section 97 of the Town and Country Planning Act 1990 which allows councils to revoke or modify a planning consent to such an extent as they consider expedient with regard to the Development Plan and other material considerations. The Committee Report for P/134/16/OUT confirms that the development proposals aligned with the policies set out within the Arun Local Plan and there were no departures from policies within the Plan. Therefore, there is no substantive basis for the Council to proceed with a Revocation Order to revoke the Outline Planning Permission at Land North of Sefter Road.
- Since Outline Planning Permission was gained at 'Land North of Sefter Road, Pagham' (ref. P/134/16/OUT), a considerable amount of cost has been expended with the preparation of plans and technical documents and associated survey work related to the progression of the previously refused Reserved Matters application (ref. P/24/20/RES) and the new Reserved Matters application which is pending consideration by the Council. ADC should be mindful that this will need to be taken into account in respect of any claims for compensation which may be made should the Outline Planning Permission be successfully revoked.
- The impact of revocation of the Outline Planning Permissions will be significantly detrimental to ADC's housing delivery and the case for revocation is merely seeking to stall the delivery sustainable development within Pagham.
- In addition, it should be noted that section 97 allows for modification as well as revocation, and Council should not make any decision to revoke without fully considering modification in the alternative.
- Taylor Wimpey fully intends to implement the extant outline planning permission for residential-led development (ref. P/134/16/OUT) as expediently as possible.

The Legislation for Revocation of a Planning Permission

Section 97 of The Town and Country Planning Act 1990 provides Local Planning Authorities with the power to revoke or modify planning permission. The NPPG confirms this and notes that "planning permission may be revoked or modified to such an extent by the local planning authority as the local planning authority considers expedient or where development has stalled. In doing so the authority must have regard to the development plan and to any other material considerations". (Paragraph: 081 Reference ID: 17b-081-20190722)

Where there is an objection to a revocation order being made, the decision to revoke the permission must be confirmed by the Secretary of State. Taylor Wimpey confirm that they would formally oppose any revocation order relating to Outline Planning Permission ref. P/134/16/OUT.

In March 2006, the then Planning Minister (Yvette Cooper) described the use of the powers to revoke a planning permission, noting that LPA's should have regard to the development plan and to any other material consideration and that the decision to revoke a planning permission was not a routine justification since the fact that planning permission was granted indicates that the development was considered acceptable at the time.

Compensation

Under section 107 of The Town and Country Planning Act 1990, ADC could be liable to pay compensation to the applicant in the event that the revocation order is successful. As part of the Council's decision-making exercise on whether to revoke the Outline Planning Permission, it should take into consideration the compensation that it could be liable for. Lord Carnwath in a Supreme Court ruling in July 2012 held that:

"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."

(Health and Safety Executive) v. Wolverhampton City Council [2012] 1 WLR 2264

Taylor Wimpey have reviewed the costs associated with preparation of plans and technical documents and associated survey work related to the progression of the previously refused Reserved Matters application (ref. P/24/20/RES) and the new Reserved Matters application which is pending consideration by the Council. Taylor Wimpey estimate that these cost to date are in excess of £600,000 and Members should take this into consideration when deciding whether a revocation order may be appropriate.

Review of Petitioners Case

The case on behalf of the petitioners states that the Outline Planning Permissions were granted as departures from the relevant development plan policies. We have reviewed the various grounds raised within the petition and provide comment specifically in relation to Outline Planning Permission ref. P/134/16/OUT 'Land North of Sefter Road' within the table below.

Petitioners Comment	Taylor Wimpey Response
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	This is an incorrect interpretation. Policy GI SP1 requires all major development to be designed to protect and enhance existing Green Infrastructure assets, and the connections between them, in order to ensure a joined up Green Infrastructure Network. The policy notes that the existing Green Infrastructure Network, as shown on the Green Network Maps for each parish and town, must be considered at an early stage of the design process for all major development proposals. The Green Infrastructure Network Map on the Council's website does show the sites within the Green Infrastructure Corridor, however it is important to note that this Map still relates to the old Local Plan and has now been superseded by the housing allocations within the adopted Local Plan. The Council's website confirms that and notes that: <i>"The original parish level maps shown below detailing the GI network were based on the situation in 2012 and are being updated to reflect the currently adopted Arun</i>

	<p><i>local Plan 2018. The parish level maps below, generally, are therefore now out of date. Any updates produced are clearly marked within the following list".</i> Therefore, these sites are not allocated as Green Infrastructure for the purposes of GI SP1 as stated and it is misleading for the petitioners to provide as such. The sites are also located within the built-up area boundary as defined by policy SD SP2.</p> <p>Furthermore, each of the sites will provide suitable levels of green space in accordance with the Council's Public Open Space, Playing Pitches and Built Facilities Supplementary Planning Document (January 2020).</p>
<p>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)</p>	<p>Since the Local Plan was adopted, there clearly has been an updated position with the housing trajectory in relation to the delivery timescales for the Pagham sites, mainly due to the lengthy delays involved with securing the Outline Planning Permissions. Taylor Wimpey can confirm that it is committed to commencing development and securing the delivery of much needed housing for the District at 'Land North of Sefter Road, Pagham' with initial completions anticipated by 2022/2023 and development completed within 5 years.</p>
<p>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</p>	<p>We reject the assertion that the sites have not been comprehensively planned and would like to draw Members attention to the Committee Report for Outline Planning Permission ref. P/134/16/OUT which provides further clarification on this point. The Report states that:</p> <p><i>It should be highlighted that this outline application only relates to access with layout, scale, appearance and landscaping being reserved matters. Therefore, the development framework plan submitted in support of the application is only indicative but does show that the site can accommodate the scale of development proposed whilst providing adequate open space provision and respecting the site's location on the edge of the settlement. The application is supported by a Design and Access Statement which clearly demonstrates how the indicative layout was arrived at and adequately demonstrates that the proposed development can be efficiently accommodated on site. The Design and Access statement has identified the opportunities and constraints present at the site and responded to these with the design of the development. The development framework plan shows the sites</i></p>

vehicular access from Sefter Road with pedestrian access being provided onto Rose Green Road. It has been demonstrated that the indicative layout will achieve acceptable walkable access to community, recreational and shopping facilities both within the proposed development and outside of the site boundaries in accordance with H SP2 (f), (i) & (j) of the Arun Local Plan.

The LPA will not accept a generic housing estate on the edge of the built-up area boundary and the developer will be expected to undertake the necessary work to achieve a development of the highest possible quality which reflects the character of the locality. A condition has been incorporated with the approval requiring the submission and approval by the LPA of a 'Design Code Masterplan' prior to the submission of any reserved matters application. It is a requirement of the condition that this document will reflect the principles established within the Design and Access statement submitted in support of this application in accordance with the comprehensive masterplanning requirements of policy H SP2. It is considered that the development framework plan in conjunction with the Design and Access statement demonstrates that the development has been comprehensively master planned in accordance with policy H SP2 of the Arun Local Plan.

The Reserved Matters application which is currently under consideration by the Council is accompanied by a Design Code Masterplan which demonstrates how the development shall be comprehensively planned. The document has been produced in consultation with the Council and presented at ADC's Development Team meeting on 22nd September 2020, receiving feedback from key stakeholders including ADC Leisure & Landscape Officer, ADC Principal Drainage Engineer, ADC Principal Landscape and Project Officer, ADC Principal Conservation Officer, WSCC Principal Transport Planner, ADC Environmental Health Officer. The Design Code has been revised several times to take into account feedback received with 4 iterations of the Code provided to the Council for review and comment.

Furthermore, the Design Code Masterplan for the Hook Lane site has been approved by the

<p>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.</p>	<p>Council. (ref. P/57/20/DOC) which demonstrates how the site has been comprehensively planned.</p> <p>The comment refers to an allocation of 400 dwellings (SD1 Pagham South) although it is noted that this is an error and should refer to 800 dwelling allocation (SD2 Pagham North). The infrastructure requirements include land for the provision of an ambulance community response post, a replacement scout hut and land for either a 1FE primary school or care home. The Committee Report for the Outline Planning Permission confirms that the development at Land North of Sefter Road would meet the policy requirements of H SP2a (e) (iii) and (iv) of the Arun Local Plan. The Report acknowledges that the proposed 1FE school site would not accord with H SP2 (c) however the preferred site for the primary school is at Summer Lane. The developments will enhance integration with existing communities and provide opportunities for walking to nearby facilities and services in accordance with policy H SP2 (g).</p> <p>Both the Outline and Reserved Matters applications demonstrate how the development would achieve sustainable growth of Bognor Regis. Furthermore, as an allocated site within the adopted Local Plan, the sustainability credentials of the site (as with all other allocations) have been reviewed as part of the Sustainability Appraisal produced to support the Local Plan. All of these matters were extensively reviewed by the Local Plan Inspector as well as key statutory stakeholders.</p>
<p>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.</p>	<p>The S.106 Agreement for Outline Planning Permission ref. P/134/16/OUT secures a Strategic Access Management and Monitoring contribution of £871/ per dwelling to be used to fund a package of management measures to mitigate any impacts of residential development on Pagham Harbour including wardening, a dog project, website information, signage and monitoring as part of the Pagham Harbour strategic access management and monitoring project. Furthermore, the level of green space at the site has been designed to a level that not only meets the needs of future occupiers but also incorporates a 2.1km circular walking route, reducing recreational pressure on the Pagham Harbour SPA. The Reserved Matters layout includes 4.51 hectares of open space, which shows that the development provides for well in excess of the level of open space required by</p>

	ADC's Open Space and Play calculator which requires 1.67 hectares of public open space.
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	Policy INF SP1 notes that the Local Planning Authority will support development proposals which provide or contribute towards the infrastructure and services needed to support development (including the necessary infrastructure set out within the Infrastructure Delivery Plan) to meet the needs of occupiers and users of the development and the existing community. The Outline Planning Permission at Land north of Sefter Road, Pagham contributes towards the requirements set out within the Infrastructure Delivery Plan, providing for financial contributions towards: education (early years, primary, secondary and sixth form); libraries; fire and rescue; policing; Strategic Access Management Measures at Pagham Harbour; leisure facilities including swimming pools, sports halls and playing pitches; NHS; WSCC Highways contributions; WSCC footpath contributions; Whyke Hill Junction improvement contribution to Highways England and works being undertaken by Taylor Wimpey to mitigate the transport impact of the scheme including Rose Green Road Priority Junction improvement scheme and provision of pedestrian, cycle and emergency access to Rose Green Road. The indicative cost of total financial contributions arising from the development is in the region of £4.6 million.

Housing Delivery

All of the aforementioned Outline Planning Permission are located at sites allocated for housing development within the adopted Arun Local Plan. Policy H SP1 identifies that within the plan period 2011 – 2031 at least 20,000 new homes will be accommodated in the District. Policy H SP2a (Greater Bognor Regis Urban Area) notes that strategic site allocations SD1 (Pagham South) and SD2 (Pagham North) will collectively provide at least 1,200 dwellings over the plan period.

The petition seeks to impact upon the delivery of housing at sites allocated for housing development through the Arun Local Plan and which have the benefit of planning permission for residential-led development. The NPPF notes that land with permission should be developed without unnecessary delay (para. 59).

A successful revocation order will not prevent the delivery of residential-led development at these sites but will significantly stall the delivery of these strategic allocations at Pagham resulting in a further detrimental impact upon the housing trajectory.

Local planning authorities are required to identify a supply of specific deliverable sites sufficient to provide a minimum of five years worth of housing against their housing requirement set out in adopted strategic policies. (NPPF, para. 73). ADC is not in a position where it can presently demonstrate a 5 year housing land supply. ADC is reliant on the extant planning permission to contribute towards housing delivery over the Plan period. The Housing Delivery Test published by

MHCLG on 19 January 2021 indicated a 61% under delivery against ADC's housing requirement set out within its Local Plan. The PPG notes that a 20% buffer on the Local Planning Authority's 5 year land supply should be imposed if housing delivery falls below 85% and that the application of the presumption in favour of sustainable development if housing delivery falls below 75%. (Paragraph: 042 Reference ID:68-042-20190722)

Whilst we appreciate that the development proposed at these sites has been relatively contentious with the residents of Pagham, Taylor Wimpey are continuing to work extremely hard to engage with key stakeholders with the preparation and submission of the Reserved Matters application and Design Code Masterplan. Remaining stakeholder concerns are being addressed through the reserved matters process and this is the appropriate place to address such concerns; revocation or indeed modification of the outline permission would be an inappropriate and disproportionate response. We recently attended the Pagham and Aldwick Advisory Group meeting and presented the detailed proposals to members of the Group and other Pagham site developers. The feedback received from Arun District Council and Pagham Parish Council regarding the proposed design and layout of the scheme was positive, confirming that the revised scheme represented an improvement to the previously refused Reserved Matters application layout. Taylor Wimpey confirms its commitment to work with the Council to ensure that Reserved Matters consent is achieved and relevant pre-commencement conditions are discharged as expediently as possible to ensure that residential-led development can be delivered as swiftly as possible.

Summary and Conclusion

In conclusion, revocation of the aforementioned Outline Planning Permissions as requested by the petition would be a disproportionate response to any material concerns, significantly detrimental to the timely delivery of residential-led development within the District, and expose the Council to significant financial risk as Taylor Wimpey would seek compensation for the costs of abortive work. Therefore, it would not be expedient for the Council to revoke the Outline Planning Permissions and would be contrary to Section 97 of The Town and Country Planning Act 1990 and relevant guidance set out within the NPPG. The revocation of the Outline Planning Permissions will hinder sustainable, identified growth which would not be aligned with the principles of sustainable development as set out within the NPPF.

The grounds presented in the petition to revoke the Outline Planning Permission at Land North of Sefter Road, Pagham have been reviewed in detail and there is no sound basis for any of these grounds to be accepted. The Outline Planning Permission fully accords with relevant policies within the adopted Arun Local Plan. Accordingly, there are no material considerations which indicate that the Outline Planning Permission at 'Land North of Sefter Road' should be revoked. We urge that ADC rejects the demands set out within the petition to revoke the Outline Planning Permission ref. P/134/16/OUT and the other Outline Planning Permissions within Pagham.

Yours sincerely



HARDEEP HUNJAN
Planning Associate

cc. Taylor Wimpey UK Ltd
 Gowling WLG LLP



12 May 2021

Our Ref: OJ/16.154

Karl Roberts Esq
Arun District Council
Civic Offices
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BN17 5LF

Dear Mr Roberts

**Petition before Arun District Council seeking the revocation of planning permission
P/25/17/OUT, P/140/16/OUT, P/143/16/OUT and P/30/19/OUT**

I am writing on behalf of my Client, Hallam Land Management Limited, (Hallam) in response to the above Petition. This Petition seeks the revocation of four outline planning permissions granted by the Council in respect of land at Pagham, which includes land at Hook Lane which is subject to Permission P/30/19/OUT that Hallam control.

The land to which these permissions relate is allocated for housing development in the adopted Arun District Local Plan 2018, the soundness of which was confirmed by an independent Inspector who **considered the Council's overall housing needs** and the limited opportunities open to it to meet those needs, given the highly constrained nature of Arun District. The adoption by the Council of the Local Plan 2018 was not subject to any successful legal challenge.

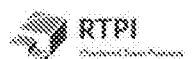
The Permission was issued on 2nd September 2019. The Application (along with the other applications which formed the basis for the other permissions which are subject of the Petition) prompted objections from Pagham Parish Council, various local action groups and individual objectors. The lawfulness of the Permission, which relies in part upon the Local Plan 2018 may only be challenged by judicial review, but no claim was brought within the prescribed time period.

The Petition is devoid of merit and the arguments presented are largely a repetition of those made **both at the time of the Local Plan Examination and thereafter in the context of the Council's** consideration of the planning application. Moreover, the argument put forward that, because the Council is not able to meet the requirement in the NPPF to identify a minimum of five years' worth of housing (para 73), these housing allocation policies are out-of-date, is plainly irrational.

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My Client have sought advice from leading Counsel, Mr Thomas Hill QC, in respect of Section 97 of the Town and Country Planning Act 1990 and I am enclosing this herewith. I am sure the Council will **want to consider carefully Mr Hill's Written Opinion**, especially those sections relating to the use of Section 97 and compensation in respect of any abortive expenditure, loss or damage attributable to the Revocation, where the Petitioner has either misunderstood the legislation, or is seeking to misdirect the Council.

Lastly, and for the avoidance of doubt, my Client, Hallam, strongly object to the revocation of **planning permission P/30/19/OUT for the reasons given above and in Mr Hill's accompanying Written Opinion**. Equally, in the event the Council does chose to revoke this planning permission, I am advised they will be seeking compensation in the terms described by Mr Hill.

Should you have any queries, please do not hesitate to contact me.

Yours faithfully



Owen Jones
Director



HALLAM LAND MANAGEMENT LIMITED

LAND AT HOOK LANE, PAGHAM

**PETITION BEFORE ARUN DISTRICT COUNCIL SEEKING THE REVOCATION
OF PLANNING PERMISSIONS P/25/17 OUT, P/140/16 OUT, P/134/16 OUT AND
P/30/19 OUT**

OPINION

INTRODUCTION

1. I am asked by Hallam Land management Limited (“Hallam”) to consider the content of a petition (“the Petition¹”) lodged with Arun District Council (“the Council”) which seeks the revocation of four outline planning permissions granted by the Council in respect of land at Pagham. Taken together, these permissions are all the subject of strategic allocations in Pagham which are made in the Arun District Local Plan 2018 (“the Local Plan 2018”). Hallam controls the land at Hook Lane, Pagham (“the Site”) which is the subject of outline planning permission P/30/19 (“the Permission”) and which falls within the allocation SP2a “Land at Pagham North”.

¹ I have paginated the Petition pp.1-9 when considering it further herein

2. The Permission was issued on 2nd September, 2019 pursuant to application reference P/30/19/OUT (“the Application”). The Application (along with the other applications which formed the basis for the other permissions which are subject of the Petition) prompted objections from Pagham Parish Council, various local action groups and individual objectors. However, as noted above, the Site was the subject of a strategic allocation in the Local Plan 2018, the soundness of which was confirmed by an independent Inspector who considered the Council’s overall housing needs and the limited opportunities open to it to meet those needs, given the highly constrained nature of Arun District. The adoption by the Council of the Local Plan 2018 was not subject to any successful legal challenge. The lawfulness of the Permission, which relies in part upon the Local Plan 2018 may only be challenged by judicial review, but no claim was brought within the prescribed time period.

3. I have reviewed the Report prepared by Officers for the Development Control Committee Meeting of the Council on 7th August, 2019 (“the Report”) which recommended that the Council should grant the Permission. The Report contains a thorough account of the objections received, addresses these objections directly and rejects them in favour of a recommendation of approval. I was immediately struck upon re-reading the Report that the Petition is very largely a belated attempt to re-run the failed arguments which opponents to the Local Plan 2018 and the Application raised in previous years. As such, it represents a misguided and wholly inappropriate attempt to circumvent normal routes for participating in the planning process and, in my opinion, should be firmly rejected by the Council for reasons to which I will now turn.

THE POWER TO REVOKE A PLANNING PERMISSION PURSUANT TO SECTION 97 OF THE TOWN & COUNTRY PLANNING ACT 1990

4. I have no quarrel with the summary of the relevant statutory provisions set out in the Petition. However, these are not placed in context. The Council will need to be advised that these provisions are very sparingly used. The statutory planning regime has been established to achieve maximum levels of certainty for all stakeholders, including the beneficiaries of planning permission. For this reason, opportunities to challenge the grant of permission are heavily constrained and limited in both time (6 weeks) and content (error of law). These limits are strictly policed by the Courts and are now reinforced by the Senior Courts Act 1981² obligation to refuse to grant relief if it appears to the Court to be “highly likely that the outcome for the applicant for judicial review would not have been substantially different” notwithstanding the finding of an error.
5. In parallel with this highly restrictive approach to the challenge of a planning permission, the use of the revocation powers is also highly constrained. In particular:
- i. a revocation order must be expressly confirmed by the Secretary of State where there is objection to it being made (as there would be in this case); and
 - ii. any confirmed order will be subject to the payment of compensation by the local planning authority in respect of any abortive expenditure or any other loss or damage directly attributable to the revocation order: see section 107 (1) of the 1990 Act.
6. Accordingly, contested revocation orders are very rarely made or confirmed.

² Section 31(2A)

**LIABILITY ON THE LOCAL PLANNING AUTHORITY FOR THE
PAYMENT OF COMPENSATION IN RESPECT OF ANY ABORTIVE
EXPENDITURE, LOSS OR DAMAGE ATTRIBUTABLE TO THE
REVOICATION**

7. Here, it would appear that the Petitioners have misunderstood the legislation. They have appreciated that the ruling of the Supreme Court in *HSE v Wolverhampton City Council* [2012] UKSC 34 means that a local planning authority was “entitled and usually required to take into account the cost to the public” of exercising its section 97 powers. However, the account at pages 8-9 of the Petition under the heading “Compensation issues” mistakenly proceeds on the basis that the main head of compensation sought would be in respect of abortive expenditure (matters such as wasted professional fees to discharge reserved matters, trial trenching or other exploratory work carried out post the grant of outline planning permission but prior to implementation). Indeed, it is stated in the Petition that “there is currently no evidence that [certain] landowners have incurred any expenditure that could or would be subject to a claim”.

8. This analysis appears entirely to overlook the broader “loss or damage” head which captures “any loss or damage consisting of depreciation of the value of an interest in land”: as confirmed by section 107(4) of the 1990 Act. Inevitably, by far the greater head of claim would be in respect of depreciation in the value of land consequent upon the revocation of planning permissions for highly valuable residential development. Whilst I would expect the “abortive expenditure” head of claim to run to many hundreds of thousands of pounds, I would expect the “depreciation in value”

head of claim to run to many millions of pounds and, indeed, tens of millions of pounds across the four permissions. I would challenge the assertion made in the penultimate paragraph of the Petition that these levels could be “entertained by [the Council] within normal budgetary procedures”. Accordingly, I would expect the levels of compensation payable by the Council to run well into 8 figures and to pose a serious threat to its financial stability. Pursuing such a course in respect of the revocation of permissions which deliver the strategic allocations set out in the Council’s own independently endorsed and recently adopted Local Plan would not seem to me to be rational conduct for the Council.

THE MERITS OF THE PETITION

9. As I have already suggested, I consider the Petition to be singularly devoid of merit. It is - in large part - a barely disguised regurgitation of the points which local objectors raised at the application stage and which were considered by the Council and rejected at that stage. The revocation procedure cannot sensibly be used simply to re-run the old arguments pursued by objectors to development with the expectation of a different outcome (but with a terrible financial penalty attached if the Council can be persuaded to perform a *volte face*).

10. The points in the “box”³ are a direct re-run of the objections raised in 2019. The Application was not considered to be a departure in 2019 – neither by Hallam nor by the Council. Indeed, the Application was a response to the strategic allocation of the Site in the recently adopted Local Plan. Had the Petitioners considered there to be an

³ Pp.5-6 of the Petition

error of law in this respect, for example in respect of conformity with advertisement requirements, then the correct course was to bring an application for judicial review within 6 weeks of the grant of the Permission; and not to wait two years and make the point in a petition.

11. The suggestion that the strategic allocations are now “out of date” because the Council is failing to maintain a 5 year housing land supply is completely misconceived. The recently adopted allocations do not fall away because the Local Plan requires review – and, in all probability, the allocation of further sites to supplement existing allocations. I am unable to follow the logic by which the Permission is declared to be “undeliverable”⁴. The most significant obstacle to delivery so far has been the guerrilla warfare pursued by Mr Collins and his clients in the form of the submission of conflicting applications and threats of judicial review - which have occupied Council officer time and resource and regularly delayed the bringing forward of the strategic allocations.

12. The Petitioners’ case in relation to the outcome of the forthcoming local plan review is entirely opaque. Plans are continually under review across the country, but that cannot possibly be a reason to reappraise the merits of permissions granted before the latest review has commenced. That way would lie chaos. In any event, the Petition states⁵ that “the Petitioners do not say that a revocation of these OPPs would necessarily result in a change to the adopted Local Plan policies”, so their objectives are extremely muddled. This simply goes to emphasise the completely misconceived and inappropriate basis upon which the Petition is advanced.

⁴ Page 7 and footnote 3

⁵ Page 7

13. Speculation⁶ about how the beneficiaries of the four permissions (which are the subject of the Petition) might respond to revocation is precisely that: straws in the wind. The only known fact available to these beneficiaries (including Hallam) would be that their valuable planning permissions are to be revoked. It would be wholly irresponsible for the Council to proceed upon any basis other than that any revocation order that it might make would be subject to the strongest possible objection and that a full award of compensation would be sought from the Council by all relevant parties.

CONCLUSIONS

14. As I have explained, in the absence of agreement from the beneficiaries of a planning permission, revocation of a permission is, in practice, a rarely used and extreme course of action for a local planning authority to take. One reason for this is the severe financial penalties which it can inflict upon Council Tax payers faced with footing the compensation bill. In my opinion, section 97 is not to be regarded as an opportunity for an authority to change its mind unless there are compelling reasons for so doing. In this case, there is absolutely nothing advanced by the Petitioners which suggests that the decision of the Council's Development Control Committee in 2019 in relation to the Permission was patently taken on an erroneous basis and/or requires urgently to be reversed, with all the severe financial perils which that will bring down upon Arun District.

⁶ Page 8

15. Accordingly, and for all the above reasons, this Petition should be firmly rejected by the Council and I would advise Hallam to make strong representations to the Council that this is the response which it should make.

THOMAS HILL QC

11th May, 2021

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12 May 2021

Without Prejudice

Dear Sirs

Petition seeking to revoke Outline Planning Permissions refs. P/25/17/OUT, P/140/16/OUT, P/134/16/OUT and P/30/19/OUT

We act for Taylor Wimpey UK Limited. We understand that Arun District Council ("the Council") has received a petition under its Petition Scheme calling for revocation by the Council of Outline Planning Permissions refs. P/25/17/OUT, P/140/16/OUT, P/134/16/OUT and P/30/19/OUT ("the Petition").

We further understand that the Council has accepted the Petition and that, as it has the requisite number of signatures, the Petition will be considered at Full Council.

We are surprised and concerned that the Petition has been accepted by the Council. The statutory planning regime provides a clear and transparent mechanism for the consideration of planning applications and it is inappropriate for the Council to have an alternative scheme that allows the statutory process to be circumvented.

Indeed, paragraph 2.3 of the Council's Petition Scheme states that:

A petition will not be accepted where:-

- *it is considered to be vexatious, abusive or otherwise inappropriate;*
- *it is a statutory petition (for example, requesting a referendum on having an elected mayor);*
- *it refers to a planning or licensing application; or*
- *it refers to a decision for which there is an existing right of appeal or other procedure (for example, Council tax banding).*

The third bullet point specifically excludes planning applications and the Council on this basis should have rejected the Petition.

We presume that the Petition has not been so rejected because the Council has erroneously interpreted the third bullet point as only applying to *live* planning applications. Such an interpretation would provide an

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opportunity for any of the Council's planning decisions to be re-opened after the statutory process had been concluded. The purpose (or indeed unintended consequence) of the Petition Scheme cannot be to undermine the certainty afforded to landowners and developers by the statutory planning regime by allowing objectors to re-open previously considered issues or raise concerns after statutory deadlines have passed.

It is notable in this context that the material considerations raised in the Petition as potential grounds for revocation are not new. These matters were considered fully and properly at the time the applications were determined. Moreover, some of the concerns raised are being addressed through a *live* reserved matters application. These matters are the subject of a live planning application and any objections or concerns should be raised and considered in response to that application.

Even if the word 'application' in the third bullet point is narrowly interpreted not to include planning applications which have been determined, the Petition should in any event have been rejected under the fourth bullet point because the planning regime provides another procedure for objection. The fact that the other procedure has been exhausted by objectors does not prevent the fourth bullet point from applying.

We trust that the Council will reconsider its acceptance of the Petition on the above grounds and consideration of the Petition at Full Council will not proceed. Should the Petition not be rejected, we will advise our client on options for formally challenging the Council's validation decision.

Please note that, should consideration of the Petition go ahead, our client would object to any revocation of the permissions under section 97 of the Town and Country Planning Act 1990 alongside challenging the Council's validation decision. Barton Willmore, our client's planning consultant, has prepared the enclosed letter setting out the reasons why, regardless of the mechanism for bringing consideration of revocation before Members, our client would object to any revocation order made. The content of the Barton Willmore letter should inform Members' material considerations in the context of section 97.

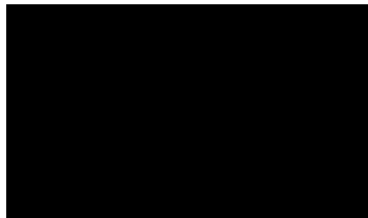
Yours faithfully



 **Enquiries please contact: Rachel Martin**



Gowling WLG (UK) LLP



Karl Roberts
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Civic Centre
Maltravers Road
Littlehampton
West Sussex, BN17 5LF

Date: 12 May 2021

Our Ref: PBW/23768/A20

Your Ref: P/140/16/OUT

Dear Mr Roberts

RE – Petition for Revocation of Planning Permission P/140/16/OUT

We act for Pagham Homes Ltd, who own the majority of the land south of Summer Lane Pagham, to which PP reference P/140/16/OUT (the "Permission") applies. Our clients thank you for providing the Note prepared by the Petitioners and we write to confirm that our clients object to the proposal.

As a preliminary matter, we question whether or not the Petition should be validated as the Arun DC Petition Scheme clearly states that petitions regarding planning applications will not be accepted. This is because a statutory process exists for third parties to make representations during the consideration of planning applications. On that basis the petition should not be validated. If however the Council does elect to validate the petition and consider the request to revoke the Permission then we confirm on behalf of our clients as follows -

- 1- In the event that the Permission is revoked then an objection to that revocation will be made and pursuant to Section 98 of the Town and Country Planning Act 1990 the Revocation will have to be submitted to the Secretary of State for confirmation; and
- 2- In the event that a Revocation of the Permission is confirmed by the Secretary of State, compensation will be sought in accordance with Section 107 of the Town and Country Planning Act 1990.

With regard to the specific issues raised in the Petitioner's Note there are a number of inconsistencies and misleading statements. These are considered in further detail below. --

1. The Petitioner's Note is misleading as it seeks to identify areas where there has been a departure from the Development Plan in granting the Permission. The current Development Plan includes the Arun District Council Local Plan (ALP), which was adopted in 2018, and it is specific policies within that plan that the Petitioner identifies as being departed from. Unless stated otherwise, references to policies in this letter are from the ALP.
2. It is clear from the Officer's Report prepared in the consideration of the application before Permission was granted (the "Officer's Report") that the application was considered against all of the identified policies and that there are clear and rational explanations of how the policy requirements have been met. The following points are made in direct response to the areas identified in bullet points in the Petitioner's Note regarding departures from the Development Plan -

Cardiff London Lymington Richmond Southampton Woking

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- a. It states that the site is allocated as green infrastructure for the purposes of policy GI SP1. This policy does not allocate green infrastructure, and instead sets the basis on which proposals should be considered where they will affect green infrastructure. The site is in fact in agricultural use and is not in itself green infrastructure.
 - b. It states that Policy HSP1 allocates the site for 400 dwellings to be built by 2025/26 with development commencing on site with 50 dwellings being built in 2018/19. Policy HSP1 does not do this, it sets a total target of 20,000 homes between 2011-2021 for the entire District. There is nothing specific with regard to the timing of delivery of the Pagham site.
 - c. It states that Policy HSP2 requires development to be carried out in accordance with a masterplan and that the Permission was not granted subject to that requirement. That is incorrect, as there are conditions within the Permission requiring a Design Code Masterplan and the Design and Access Statement submitted with the application sets out different character areas. This is explained and considered clearly in the Officers Report.
 - d. It states that Policy HSP2a requires certain requirements and that there is no evidence that this is being met. There is an assessment of the infrastructure that the Development will deliver in the Committee Report which specifically considers how the proposal meets the requirement of Policy HSP2a.
 - e. It states that Policy ENV DM2 is not met because the Permission does not provide sufficient greenspace. The Officer's Report contains a detailed description of the process that was followed in accordance with the Habitats Regulations to ensure that an Appropriate Assessment was carried out to determine the impact on Pagham Harbour. The Officer's Report confirms that in discussion with Natural England a package of mitigation measures was agreed upon which included the provision of on-site green space.
 - f. The Note states that the Section 106 Agreement entered in support of the Permission does not provide infrastructure in accordance with policy INF SP1. This is patently false as the Section 106 Agreement delivers a wide range of planning obligations.
3. The suggestion in the Petitioner's Note that certain publicity requirements should have been followed in accordance with the Development Management Procedure Order because of a departure from Development Plan policy is incorrect because for the reasons explained above, the Development Plan policies were followed and there was no departure.
 4. The Petitioner suggests that the Permission is effectively unimplementable due to ADC determining that housing policies being out of date. The Arun District Council Local Development Scheme 2020-23 confirms the current position is that the ALP is the current adopted policy document against which planning applications should be judged. The Council has resolved to review the plan, but it remains the current adopted policy of the Council. The Petitioner's suggestion that it is therefore somehow impossible for any reserved matter applications to be properly determined because the policies have changed is therefore incorrect. Additionally, even if the policy had changed, that would not be a reason for an extant outline position to be unimplementable.
 5. The suggestion that some landowners or promoters may simply accept a revocation and seek a new planning permission is wholly unrealistic. Whilst we can only speak directly on behalf of our clients, it is extremely difficult to imagine that any other party with an interest in any of the sites would not object to a revocation and seek compensation in the event that a revocation order is made.
 6. The notion that there has been little or no expenditure in connection with the Permission is inaccurate. The Petitioner's Note suggests that because the Development has not been implemented, there has been no expenditure. The reality is that in addition to the purchase of the Site, my clients have already spent a significant amount in the preparation of Reserved Matter Applications and in preparing materials for the discharge of conditions. For commercial reasons we are not in a position to provide actual figures of the costs incurred to date but the Council should be aware that the amount sought would be tens of millions of pounds.

Stockport London Luton Richmond Southampton Yorking

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Karl Roberts
Director Place
Arun District Council

your ref
our ref RQS.054507.01300
direct dial [REDACTED]
email [REDACTED]
date 12 May 2021

By Email: Karl.Roberts@arun.gov.uk

Dear Sirs

Revocation Petition – Outline Planning Permission Reference: P/140/16/OUT (the Petition)

We act for VIVID Housing Limited (**VIVID**) in respect of the above matter. VIVID is a development partner of Paghams Homes Ltd (a subsidiary of Foreman Homes Ltd) and is closely involved in the development described in the above planning permission. We ask that this letter be made available to Councillors attending any Full Council meeting and/or the Development Control Committee if the Petition is put before such meeting(s) for consideration.

It is clear from the Arun District Council's (the **Council**) petition scheme (ratified by Full Council on 8 January 2014) that the petition is invalid because it relates to "planning applications" as described in Section 2.3 of the petition scheme. In the circumstances it would be inappropriate for the important business of Full Council to be distracted by matters that have already been considered and conclusively determined by the Council's planning committee, and as such the Petition can be dismissed immediately on this basis alone.

Notwithstanding the above, VIVID also strongly urges the Council to dismiss the proposals set out in the Petition on the substance of the petition. Making an order to revoke the planning permissions mentioned in the Petition would:

- Result in the Council being liable for compensation claims running into the tens of millions of pounds, from our client alone;
- Represent a devastating set back for housing delivery within Arun District, and in particular affordable housing delivery;
- Trigger a lengthy and costly appeal process before the Secretary of State who would need to confirm any revocation order should the Council make such an order;
- Ultimately be bound to fail given the ill conceived points raised in the Petition.

Background to the Development

Following a resolution of the Council's planning committee, outline planning permission was granted on 22 November 2018 for outline permission (the **Permission**) for the development of land south of Summer Lane and west of Paghams Road comprising of up to 400 dwellings and other mixed use development (the **Development**). All matters were reserved save for access.

LONDON BIRMINGHAM EXETER MANCHESTER ABU DHABI BAHRAIN DUBAI MALAYSIA OMAN

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The site is former agricultural land and spans an area of 22.97 hectares. The Permission is unimplemented but remains extant. A reserved matters application has not yet been submitted but is in the process of being worked up between Pagham Homes and VIVID.

VIVID's Involvement

The Development land has multiple landowners. Pagham Homes has purchased part of the land forming the Development and has entered into contractual arrangements with VIVID to bring the scheme forward. Pagham Homes and VIVID are proposing to provide 105 affordable homes secured under the S106 Agreement and a further 114 affordable housing dwellings secured via grant funding. The Development will therefore be providing significantly more than 50% affordable housing, making this a compelling scheme that is clearly and overwhelmingly in the public interest. The Development also utilises a significant portion of VIVID's strategic partnership grant. VIVID has been able to secure a very significant allocation of grant for the scheme to deliver additional affordable housing, which would be lost if the Permission is revoked.

VIVID is therefore fully committed to delivering the Development alongside Pagham Homes, and any decision to revoke the Permission would represent a major set back in terms of affordable housing delivery, and indeed it would hinder the Council's ability to meet the objectives of its development plan as a whole.

Response to specific issues raised in the Petition

We set out below the key assertions made by the Petition, together with VIVID's response.

Assertion 1: There was a procedural error at the time the Permission was granted because the application was not publicised as being one that departs from the development plan

This is plainly wrong. It is plain from the planning committee report that the Permission was granted on the basis that the Development does adhere to the development plan. It follows that there was no procedural error. The Petition simply seeks to re-litigate the merits of the planning application some 3 years after it was determined. The Permission is legally valid (and has already been upheld by the High Court in previous judicial review proceedings) and cannot now be challenged on these vexatious procedural grounds.

Assertion 2: That some of the policies against which the application was assessed are now out of date

This assertion is irrelevant. Planning law requires that applications be determined in accordance with the development plan unless material planning considerations indicate otherwise. Applications are to be assessed at the time that the decision is made. Decision makers are not required to revisit planning permissions where there have been changes in circumstances (policy

or otherwise) since the grant of the permission. Such policy changes are a constant feature of the planning system, whereas decisions to revoke planning permissions due to policy changes are rarely (if ever) encountered. In this case the Committee Report robustly considered planning policy within the up-to-date local plan and the Development was deemed to accord with the said plan.

Even if the Petition was correct that relevant policies are out of date (which is denied), it would not result in a different outcome in terms of the merits of the Permission. Indeed since the Permission was granted, the case in favour of the Development is even more compelling. The Government Housing Delivery Test figures for 2020 demonstrate that over three years to 2020 the Council has only delivered 61% of the required housing target - 1,879 homes delivered out of the 3,092 homes required. This has therefore triggered a 'presumption in favour of sustainable development'. In 2019, housing delivery was low enough to warrant the Council producing an action plan which confirmed that the Council could not demonstrate a five year housing land supply. It is therefore evident that the housing to be delivered by the Development is a crucial contributor to the Council's housing targets. Four permissions are the subject of the Petition, which would represent a loss of up to 1,000+ homes for the Council which would be wholly unacceptable.

Assertion 3: That the Development is undeliverable

This is fundamentally wrong. Pagham Homes and VIVID have entered into legally binding commitments to bring forward the scheme. Only a decision to revoke the Permission stands in the way of delivery.

Assertion 4: That there is "new evidence" in the form of new and emerging policies

The Petition entirely fails to articulate how changes in the plans of other authorities in the area, or the policies of Natural England or those within the NPPF has any bearing on the merits of the Development. There are no changes in policy that would justify the draconian act of revoking the Permission.

Expediency of Revocation

A decision to revoke a planning permission may only be made where it is "expedient" to do so. It is clear that it would not be expedient for the Council to revoke the Permission for the reasons set out below:

Housing delivery

As noted above, the Government Housing Delivery Test figures for 2020 demonstrate that over three years to 2020 the Council has only delivered 61% of the required housing target - 1,879

homes delivered out of the 3,092 homes required. Revoking the Permission would exacerbate that problem, and would risk the Council being placed in special measures by the Government.

Loss of Affordable Housing grant

VIVID has secured a very significant allocation of grant funding to provide additional affordable housing at the Development. If the Permission is revoked, the grant will be lost. There is no guarantee that it could be secured in the future if a new permission were to be granted post revocation. This would result in a devastating loss of affordable housing, the impact of which should not be underestimated.

The site would remain allocated for housing

It should be noted that a decision to revoke the Permission would not prevent the site from being developed - it would only delay matters given that the Secretary of State would be likely to reject any revocation order. Even if the Secretary of State did decide to confirm a revocation order, the site would remain allocated for new housing and a further planning application would be inevitable. This would pose a risk to the Council because the Government plans to significantly de-regulate the planning system, giving local authorities less say over the design of new development and reducing the overall burden on developers.

Precedent

Any decision to revoke would set a dangerous precedent for the Council. If the Council decided to revoke the Permission (or any of the other permissions mentioned in the Petition) the Council would need to undertake a review of all of its extant permissions across Arun District and consider whether the reasons for revocation applied equally to other sites. This would be a huge administrative task, and a gross waste of public resources. But revoking the Permission whilst failing to apply the same approach to other sites could itself lead to judicial review proceedings against the Council.

Compensation

In considering whether to exercise its powers under section 97 TCPA 1990 the Council must have regard to the compensation it would have to pay under section 107 TCPA 1990. As a custodian of public funds the Council must consider whether the potential cost of revocation is proportionate to the aim (*see Health and Safety Executive v Wolverhampton City Council*). This is of vital importance and very significant weight should be afforded to the financial implications of a decision to revoke.

As mentioned, the Permission has not yet been implemented but remains extant. However, compensation pursuant to section 97 TCPA 1990 would include the significant depreciation of the value of the land that would be suffered, which would run into the tens of millions of pounds. But the compensation that the Council would be liable for goes much wider than the depreciation in land value. The Council would also be liable for other losses including abortive reserved matters application costs incurred to date (currently budgeted to be £400,000 alone), abortive costs incurred post grant of the Permission, the costs of re-starting the planning application process, the costs of appealing to the Secretary of State against revocation.

VIVID estimates that the total value of compensation claims from VIVID alone would exceed £20 million.

The Council should be in no doubt that if it revoked the planning permissions mentioned in the Petition, costly, complex and time consuming litigation would ensue in relation to multiple compensation claims. As well as being a total waste of public funds, the inevitable litigation would prove to be a significant distraction from the proper business of the Council, and would harm the capacity of officers to deliver on the Council's priorities.

Opposed orders referred to the Secretary of State

Where there is an opposed revocation order it must be confirmed by the Secretary of State who would convene an inquiry to consider the merits of the order. Given the obvious lack of any merit in revocation, VIVID and other interested parties to the inquiry process would have strong grounds on which to seek a costs award against the Council, which would be likely to be very substantial indeed.

The Council should be on notice that not only is there significant financial risk associated with public inquiries and court proceedings, but that these processes would be lengthy and complex, which would further undermine the delivery of new housing at the Development site. It is inconceivable that development would proceed whilst appeals or litigation is ongoing, thereby putting the development back by several years at the very least.

Conclusions

The power to revoke is a rarely used piece of legislation. A parliamentary briefing paper issued on 4 July 2016 on revocation states: *"Powers to revoke planning permission are very rarely used. Where they are used they are often uncontentious and unopposed. Since 2009 only three revocation orders issued under section 97 TCPA 1990 have been submitted to the Secretary of State for confirmation"*.

The Development has already suffered delays as a result of high court litigation. The Council will be aware that Pagham Parish Council (led by Paul Collins) lodged a failed statutory challenge in



the High Court which was dismissed on 4 July 2019 (the **Challenge**). Justice Andrews commented that on a fair reading of the Committee Report, it drew the Committee's attention to the 'proper approach required by the law'. Justice Andrews also commented that the Challenge was 'fundamentally misconceived'. The Petition is simply the latest vexatious attempt to frustrate the Development and should be roundly dismissed.

A decision to revoke would be a huge and unnecessary distraction from the task at hand, namely tackling the housing crisis and delivering for local people. The fall out from a decision to revoke the Permission would take years to resolve, and would not serve the Council's constituents or further the objectives of the Council's development plan.

Whilst VIVID appreciates and applauds the importance of consultation and local involvement in the planning process, all stakeholders have already had the opportunity to engage in the planning application. The representations of stakeholders were faithfully taken into account by the planning committee in 2018. It is clearly not appropriate or desirable for the merits of planning applications to be re-litigated years after the event. Such an approach would clearly cause harm to the reputation of Arun District as a place to do business and to build much needed new homes.

VIVID therefore urges the Council to dismiss the proposal outlined in the Petition to ensure VIVID along with others having an interest in the Development land can deliver much needed new housing as soon as possible for the public's benefit.

If you require any further information, please contact Rory Stracey via the details above. Please can you also copy in Jasmine Ratta, to any emails. Her email address is [REDACTED]

We look forward to hearing from you as soon as possible on the above.

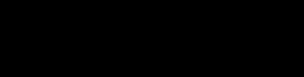
Yours sincerely

[REDACTED]

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Ref: JS/LANG/PAGH
Date: 11th May 2021


Dear Mr Roberts

Re: Petition requesting the revocation of Planning Permission P/140/16/OUT ("the Planning Permission")

I write on behalf of my clients, Hanbury (AM) Ltd and members of the Langmead family (who own part of the Summer Lane site which has the benefit of the Planning Permission) regarding the petition submitted to the Council by Paul Collins on 15th February 2021. I understand that you are currently considering the validity of said petition but that if it is considered valid, you will be writing a report to members in respect of said petition to be presented at an upcoming Full Council meeting. As you will be aware, my clients remain the landowners of a portion of the site with the benefit of the Planning Permission. **In essence, this is the land occupied by "Phase C" of the proposed development plus the land safeguarded for the new WSCC primary school. The balance of the site (i.e. "Phases A and B") has been sold to Pagham Homes** who (through their agent Foreman Homes) will develop those phases and who I understand will be writing to you separately in relation to the petition.

I make no comment within this letter as to the validity or otherwise of the petition as I have not seen the full petition. I have, however, seen a copy of the "*Case submitted on behalf of the petitioners*" by Mr Collins and write to respond to and correct a number of the assertions made therein. As seems to be a regular occurrence, Mr Collins makes a number of statements and assertions within the document that are both fundamentally incorrect and misleading and whilst I am sure you are already alive to most of these points (and I cannot believe for one moment that the Council will consider acceding to this completely unjustified request) my clients regard it as important that they are corrected. Much time and cost has already been wasted (by my clients, the Council and Pagham Parish Council) in relation to this site due to the completely unjustified judicial review proceedings previously brought. You may recall **that said judicial review claim was described by the judge in her judgment as "yet another example of the type of nit-picking scrutiny of a planning officer's report which is to be utterly deprecated."** I am therefore sure that the Council will share our aspiration to avoid any further such wastage or delay.

I set out the relevant points in response to the arguments in support of the petition in the following sections of this letter. However, as a fundamental and overarching point the Council should note that my clients (and I would be amazed if the same approach is not taken by the landowners of the other impacted sites) will vehemently object to and oppose any proposed order revoking the Planning Permission. Whilst Mr Collins (somewhat unconvincingly)


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ventures to suggest that this might not be the case with some of the landowners, the Council and its members should be under no illusions on this point.

In response to the case put forward on behalf of the petitioners, we would respond as follows:

1. Planning permission P/140/16/OUT was not granted as a departure from the development plan

Every claim made within the table within the case for the petitioners setting out the purported departures from the development plan in respect of the decision to grant the Planning Permission is simply incorrect. Moreover, Mr Collins is well aware this is the case in most instances (or at least he should be) as he made detailed representations objecting to the application for the Planning Permission and Pagham Parish Council (for whom he was acting at the time) pursued a number of these claims regarding alleged non-compliance with the development plan policies in the judicial review proceedings relating to the Planning Permission. They were found (twice) not to be arguable and were rejected by the High Court who refused permission to proceed on the relevant ground (ground 3 in the JR). Specifically:

- A simple reference to the relevant Parish map for Pagham (copy attached) shows that the strategic Pagham South allocated site is not allocated as Green Infrastructure for the purposes of Policy GI SP1;
- The Planning Permission was granted by the Council on the basis that the application was considered to accord with the development plan as a whole and indeed considered to accord with the specific key development plan policies referenced in the table. A simple reference to the committee reports makes this clear. Officers concluded and advised members that the development was considered to be sustainable development (and indeed re-iterated that the site had previously been confirmed as such through the local plan allocation process) and accorded with the up-to-date development plan and members granted the Planning Permission accordingly;
- The proposed development creates accessible new green spaces and was considered to accord with policy ENV DM2. The policy requires **developments to “create easily accessible new green spaces for recreation within or adjacent to the development site. These shall be capable of accommodating the predicted increases in demand for local walking, including dog walking. Good pedestrian links shall be provided between housing areas and new and existing green space in order to discourage car use”**. There is no requirement for developments to create spaces over and above those required to mitigate demand created by the development itself although the relevant areas are accessible to all members of the public;
- The Planning Permission was granted subject to a s106 Agreement which secured the infrastructure considered necessary to mitigate the development by both the Council and the County Council and thus complied again with the relevant development plan policies;
- It is unclear where **Mr Collins finds the justification for his comment that development is “not predicted to commence until 2025/26 earliest.” This is just fundamentally incorrect. As the Council will be aware, under the Planning Permission the latest development can commence on site is November 2023, but my clients and Foreman Homes are actively working to discharge the relevant conditions and obtain reserved matters approvals in order to commence on site as soon as possible.**

2. The Development Plan policies remain a key consideration for the purposes of any decision taken under s97(2) of the Town and Country Planning Act 1990

Regardless of whether any of the specific development plan policies within the 2018 Local Plan are treated as out of date for the purposes of paragraph 11(d) of the NPPF when the Council (or Secretary of State) has to determine

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planning applications, the adopted development plan remains the starting point in considering whether to exercise any powers under s97. Indeed, as has been pointed out, Section 97(2) expressly states that:

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

Therefore, the Council has a statutory duty to have regard to the relevant development plan policies in considering this petition request and to base its decision on those policies unless there are material considerations justifying a departure from the adopted policies. There is nothing in the NPPF to state that the relevant policies are considered **"out of date"** for the purposes of the decision the Council is being asked to take here.

However, even if that were the case, the Council has already concluded twice (when the site was allocated and again when the Planning Permission was granted) that the site/development is sustainable for the purposes of the NPPF and it is well established as a matter of law that even if policies are considered out of date for the purposes of paragraph 11(d), they are not simply disregarded by a decision maker. The Council is still required to take the policies into account and to apply appropriate weight to those policies having regard to the relevant circumstances. The primacy of the development plan remains. Where the presumption in favour of sustainable development tends to be considered by decision makers to outweigh **"out of date"** development plan policies is where those policies are seen as restricting or preventing housing development needed to meet the 5-year housing supply and thus the presumption is applied so as to enable development which conflicts with the relevant policy or policies but is considered to be sustainable to come forward. I have never encountered a situation where it has been suggested that the presumption in favour of sustainable development might be used to refuse an application on an allocated site (found to be sustainable) which accords with the development plan or to revoke a planning permission for such a site!

Policies HSP1, HSP2 and HSP2a remain policies within the (still recently) adopted development plan. In considering this request, the Council must have regard to those policies and what they seek to achieve. Revoking the Planning Permission which was granted in the basis it accords with the development plan and relates to an allocated strategic site **would be completely contrary to the Council's adopted development plan and, indeed, its aim** through the Housing Implementation Strategy to increase the supply of housing sites over and above the existing supply in order to seek to meet an identified and currently unmet housing need.

This point is particularly relevant in the context of a situation where the Council cannot demonstrate a 5-year supply of housing (even including these commitments on the strategic allocations). By my calculations, the loss of the four sites targeted by the petition would risk reducing the Council's currently deliverable housing land supply by over 1000 dwellings. Contrary to the assertion made in support of the petition, the revocation of these permissions would therefore clearly **prejudice the Council's ability to provide a 5-year supply of deliverable sites** and that is actually a material consideration which clearly lends further support to the refusal of the petition request. It certainly could not be rationally concluded that it is a material consideration justifying revocation of a permission that accords with the development plan.

3. The suggestion that it is a "material consideration" that the Council has no ability to ensure these sites are developed in accordance with the terms of the respective outline permissions and s106 Agreements.

Again, this is just fundamentally incorrect and in fact is yet another argument against the petition. As we have highlighted repeatedly, the Planning Permission was granted because it accorded with the development plan. As you will be aware, any reserved matters submissions (which are not planning applications) will be required to accord with the principles and parameters established by the outline planning permission and thus will by definition accord with the relevant development plan policies. The s106 Agreement binds any development pursuant to the Planning Permission. It is therefore the case that the best means of ensuring that development of this site accords with the relevant adopted development plan policies is to encourage the development of the site pursuant to the Planning

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Permission. If the permission is revoked and a new application has to be submitted, there would actually be less certainty in this regard given the current housing land supply position. As such, if this point is considered a material consideration relevant to the decision at all, it certainly is not a material consideration supporting revocation of the planning permission. It is once again the opposite.

4. The assertion within the petition that P/140/16/OUT is "undeliverable" is wrong and again is not supported by either facts or evidence.

My clients' site has the benefit of the Planning Permission which is extant. My clients and Foreman Homes have been working with the Council to discharge relevant conditions in order to enable the imminent submission of reserved matters. To the extent that there has been any delay with this site, it was caused in no small part by the judicial review proceedings that followed the grant of the planning permission and effectively delayed matters on site by a year. There is, however, absolutely no evidence to suggest that this site will not be delivering homes within 5 years. This is reflected in the fact that this site (along with the other three targeted by the petition) is considered a "commitment" within the Arun Council Housing and Economic Land Availability Study 2020 and forms part of the Council's current deliverable housing land supply which I understand to be 3.3 years. Revoking this planning permission would only cast doubt over the deliverability of the site and over that 3.3-year supply which may then be exploited by those lodging speculative planning applications reliant on the Council's inability to demonstrate a 5-year housing land supply.

5. Other new evidence

It is difficult to comment on the other new evidence cited in support of the petition as no detail has been provided as to what within that evidence might represent a material consideration justifying even the consideration of revocation of a planning permission on an allocated site under an adopted development plan to the detriment of the Council's (already unmet) 5-year housing land supply position. No specific evidence/material consideration has been cited or identified as either supporting the claim for revocation let alone one justifying a departure from the recently adopted development plan. However, in respect of the Pagham Neighbourhood Plan we would point out that this has been discontinued.

6. Compensation and Cost Issues

As is rightly pointed out within the case for the petition, it has been established as a matter of law that the compensation (or to put it another way the potential costs to the authority and the public) payable by the Council in the event of and as a consequence of any revocation is a material consideration for the authority to take into account in deciding whether or not to revoke any planning permission. In this regard, I would make the following points:

- My clients can categorically confirm that if the Council decides to make an Order revoking the Planning Permission they will object to any proposed Order. This means that the matter will require confirmation by the Secretary of State and almost certainly a costly public inquiry to consider the same. Given that we consider there to be no valid grounds for revocation of the Planning Permission then in the (inevitable in my view) event that the Secretary of State refused to confirm the Order I am confident that my instructions would be to would seek to recover the costs of any inquiry from the Council;
- Similarly, in the event that any revocation order was upheld by the Secretary of State, I can confirm that my clients would look to claim any available compensation and I understand that Pagham Homes/Foreman Homes would take the same approach. As the Council is no doubt aware, compensation can be claimed for any diminution in the value of the land resulting from the revocation of the Planning Permission and as such, members should be left in no doubt that any such compensation claim would be extremely significant. In terms of planning related costs since the grant of the Planning Permission, my clients have incurred many

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hundreds of thousands of pounds on condition discharge, technical and detailed design matters but any impact on land value would clearly be even more significant. Whilst, for commercial and confidentiality reasons, I am not able to provide specifics of the price paid for the land that has been acquired from my clients, I am instructed that the difference between the existing agricultural land value of the site and its value with planning permission is considered to be in the region of £350,000 per acre. The site covered by the Planning Permission is 66.7 acres. This should therefore give you an indication of the likely scope of any potential compensation claim and this only relates to one of the four sites covered by the petition.

Conclusions


In conclusion, therefore, there is in my view no justification for the revocation of the Planning Permission which would serve no planning purpose and would in fact be harmful to the Councils housing and development plan strategy and housing land supply position. The Planning Permission relates to an allocated site within a recently adopted development plan. It was granted on the basis that it accorded with said development plan. There is clearly, therefore, no justification, having regard to the development plan, to revoke the Planning Permission. In addition, **all relevant material considerations (e.g. the need to preserve the deliverability of the site and the Council's current housing land supply, loss of a primary school site needed by WSCC to serve the needs of the area, the enormous financial costs to the Council should the Planning Permission be revoked)** also clearly support rejection of the petition. Not one valid material consideration has been put forward that justifies even considering revocation of the Planning Permission and whilst I appreciate that the constitutional procedures of the Council may still require consideration of the petition, I hope and trust that members will be clearly advised that there are absolutely no grounds for revocation and indeed of the very significant potential consequences for the Council should they decide to do so.


I am sure that you were already well aware of many of the above points (and indeed the inaccuracies in the case put forward by Mr Collins) but I would be grateful if you could confirm that this letter will be taken into account and these points addressed in any report presented to the members. We would obviously also be grateful if you could notify us when the petition is likely to be considered and whether we are able to address the relevant committee meeting.

As a final point, it is not clear from the "Case on behalf of the Petitioners" on whose behalf Mr Collins is acting here although I am obviously aware that in previously opposing the planning application for this site he acted on behalf of Pagham Parish Council and in other recent correspondence with the Council (usually on multiple applications/matters but filed on the register page for the Planning Permission) **he has stated that "I act for no-one except myself in these matters."** I am also aware, however, that he has in the past acted for clients with significant land holdings and/or interests in the Yapton and Ford area and it is clear from his recent email of 26 January 2021 that he continues to promote the possibility of a future development strategy in the District centred on a new **settlement of over 7,000 dwellings "focussed around Ford Airfield in the parishes of Yapton, Ford and Climping."** Indeed, he actually offers within that email to provide details of how this can be achieved suggesting a continued involvement in that project. This being the case, we would ask that officers and members be alive to possible ulterior motives behind this action, not from the individual residents who may have signed the petition but rather of those involved who may not have the **"altruistic"** and anti-development motives one might assume.

With kind regards


Yours sincerely


James Smith
Principal and Director


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