

ARUN DISTRICT COUNCIL

REPORT TO AUDIT AND GVERNANCE COMMITTEE

ON 07 OCTOBER 2021

REPORT

SUBJECT Review of Handling of Pagham Petition

REPORT AUTHOR: Solomon Agutu

DATE: 23 September 2021

EXTN: 37432

COMMITTEE: Audit and Governance Committee

EXECUTIVE SUMMARY: Following debate of a petition on 14 July 2021 the Petition Organiser has requested that the Committee reviews the steps that the Council has taken in response to their petition.

RECOMMENDATIONS: Committee

1. RESOLVES that the Petition was dealt with properly.

Background

Part 8 section 4 of the Council Constitution allows any Arun resident to submit a petition provided it includes not less than 10 signatures. A petition may be signed by anyone living or working in the Arun District. Where a petition has received 1,500 relevant signatures or more it will also be scheduled for a Full Council debate. Petitions submitted to the Council must include the name, full postal address, including postcode, and signature of any person supporting the petition.

Following a number of false starts by the Petition Organisers beginning in February 2021, the Petition Organisers eventually submitted a petition consisting of a combination of manual signatures and electronic signatures. Council Officers made arrangements to verify the validity of the signatures. The verification showed that the signatures fell short of the 1500 required for a Full Council debate. The Petition Organisers challenged the count and were requested to resubmit the petition for a recount. On a recount the petition still fell short of the 1500 required for a Full Council debate. The Petition Organiser submitted a complaint which was partly upheld and the outcome was that the petition was to be resubmitted. On a third recount which included submissions of additional signatures the petition reached the threshold of 1500.

The Full Council held a debate on 14 July 2021. On 15 July 2021 the Petition Organiser submitted a request for a review to the Audit & Governance Committee. Paragraph 7.1 of the Petition Scheme provides that

“if you feel that we have not dealt with your petition properly, the petition organiser has the right to request that the Council’s Audit & Governance Committee reviews the steps that the Council has taken in response to your petition. It is helpful to everyone, and can improve

the prospects for a review, if the petition organiser gives a short explanation of the reasons why the Council's response is not considered to be adequate.

7.2 Should this Committee determine that the Council has not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to a relevant Committee or arranging for the matter to be considered at a meeting of the Full Council

The attached report responds in detail to the request for a review to Audit and Governance Committee. The report addresses the request for review which is attached as an appendix 2. The allegation that information has not been given is countered by the response to the Freedom of Information (FOI) request at Appendix 3.

The response concludes that in substance the Full Council resolution not to revoke the planning permissions was legally sound. The Petition Organisers Statement of Case and presentation at Full Council failed to show that there was a case for revocation. The Council's own QC found the statement of case to be unconvincing.

The report concludes that the process by which Full Council reached the decision not to revoke was procedurally sound.

The report concludes that the complaint about the process of verification of the signatures is not well founded as the Petition Organisers had failed to comply with the requirements of the petition scheme when the petition was being submitted to the Council for verification.

The report finds no fault with the Interim Monitoring Officers presentation at Full Council on 14 July 2021.

2. PROPOSAL(S):

In the course of administering the petition a number of questions arose about the interpretation of the Scheme. The key question was whether the petition scheme should allow any matters concerning Planning. The Interim Monitoring Officer had decided that as Revocation or Modification was dealing with a "permission" not an "application", the revocation petition was valid. In the Course of the administration of this scheme it has been proposed to the Monitoring Officer (MO) that the Petition Scheme should be changed so that no Planning matters at all should be the subject of a petition. There is no legal objection to this proposal. Committee may want to add this proposal as a recommendation to the Constitution Working Party

3. OPTIONS:

1. Do nothing - this option is not available as a decision has to be made
2. Agree the recommendations
3. Agree the recommendations but with the added proposed amendments to the constitution to the Constitution Working Party .

4. CONSULTATION:		
N/A		
Has consultation been undertaken with?	YES	NO
Relevant Town/Parish Council		
Relevant District Ward Councillors		
Other groups/persons (please specify)		
5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)	YES	NO
Financial		X
Legal		X
Human Rights/Equality Impact Assessment		X
Community Safety including Section 17 of Crime & Disorder Act		X
Sustainability		X
Asset Management/Property/Land		X
Technology		X
Other (please explain)		X
6. IMPLICATIONS:		

7. REASON FOR THE DECISION:
The reason for the decision is contained in the response to the request for a review in appendix 1.

8. BACKGROUND PAPERS: [Full Council 14 July 2021 Agenda Pack - Consideration of Petition Relating to Developments in Pagham Report and Appendices](#)

Complaint and request for a review - appendix 2

APPENDIX 1

Response to the request by Pagham Petition Organisers for a review of How the Petition was Dealt with.

What was the Pagham petition About

The Pagham Petition was a petition signed by over 1500 people working, living or studying in Arun, asking for a debate at Full Council to consider revoking four outline Planning permissions in Pagham. In other words, to remove the planning permissions from the developers.

Has the petition been debated by Full Council?

Yes. There was a debate at Full Council on 14 July 2021 to consider revoking or modifying the planning permissions and so the wishes of the petitioners were realised. They successfully exercised their right to have debate on a subject of their choice debated by Full Council in public.

What was outcome of debate.

The Outcome was that after considering whether to revoke or modify the permissions, Full Council was not persuaded a case for revocation or modification had been made, and decided not to revoke or modify the four planning permissions.

Who submitted the petition?

The first petition was submitted by a Mr Paul Collins. This was rejected as it did not meet the requirements of the petition scheme. It consisted of a hypertext link to a petition website. Council Officers could not see the names or addresses of the petitioners. As Council Officers were not the Petition Organisers, Council Officers had no access to the names and addresses. Although this was explained to Mr Collins this seemed to upset him and he accused Council Officers of blocking the petition.

The second petition was submitted by Mr Rawlins and Mrs Rawlins (The Petition Organisers). This consisted of a dump from the petition website of a list of names and post codes. This was not in accordance with the petition scheme and the Petition Organisers were asked to resubmit the petition in the correct format. The third submission failed to reach the threshold for a Full Council debate and the fourth submission reached the trigger number.

What are the requirements of a valid petition?

The petition scheme requirements are set out in Part 8 section 4 and paragraph 1.2 and paragraph 2 of the Constitution. As follows:

1.2 Any Arun resident can submit a petition provided it includes not less than 10 signatures. A petition may be signed by anyone living or working in the Arun District.

2.0 WHAT ARE THE GUIDELINES FOR SUBMITTING A PETITION?

- 2.1 *Petitions submitted to the Council must include:*
- a) *a clear and concise statement covering the subject of the petition;*
 - b) *a statement about what action the petitioners wish the Council to take; and*
 - c) *the name, full postal address, including postcode, and signature of any person supporting the petition.*

Did the Petition Organisers meet the requirements of the Petition Scheme?

No.

How did they fail to meet the requirements?

It was for the Petition Organisers to demonstrate that the petition scheme requirements in paragraph 2 of the Scheme were fully met. This they failed to do. The petition scheme requirements were not fully met in the following respects:

Choosing the wrong e petition app

The Petition Organisers chose a petition app (*change.org*) which did not address the Arun Petition scheme requirements and it therefore made it very difficult to verify the validity of the signatures. You could not tell whether para 1.2 “*signed by anyone living or working in Arun*” was satisfied.

People resident in Arun

Before submitting any of the petitions the Petition Organisers failed to remove obviously invalid signatures of people not resident in Arun. Taking into account the statement from the Petition Organisers that the petition had been validated by their bookkeeper and that they had kept illegible signatures back, it is surprising that the qualified auditor failed to identify and remove the large number of obviously invalid signatures before submitting them.

People working in Arun

Before submitting any of the petitions, the Petition Organisers failed to identify people working in Arun by reference to their workplace addresses. Taking into account the statement from the Petition Organisers that the petition had been validated by their qualified auditor, it is surprising that the qualified auditor failed to identify by reference to workplace address those people working in Arun. Their response was that it is for the Council to demonstrate that the signatories do not work in Arun. This is a preposterous suggestion. It is clear that if you are relying on *working in Arun* qualification you need to show where your workplace address in Arun is.

In consequence of these failures namely to (1) remove invalid signatories (2) identify work addresses of those working in Arun (3) to identify the study address of those studying in Arun (4) choosing the wrong petition app, the Council had to expend considerable time and resources seeking to validate the signatures. While the Council was doing this the Petition Organisers were wrongfully posting on social media and writing to Councillors that Council officers were preventing them from having their petition dealt with at Full Council.

Summary

The way this petition has been dealt with by the Council was strictly in accordance with the Petition Scheme. This contrasts with the way that the Petition Organisers failed to comply with the scheme in the way it was organised. The first submission was a hypertext link to a proprietary petition app (change.org) which did not address the Arun qualification criteria and had no relevant details. The second submission failed to reach 1500 to trigger a debate. The third submission failed to reach the required number because the Petition Organiser failed to submit all the signatures for a recount as they assumed that the Council would add the new submission to the old submission when what was required was a total recount, in accordance with good practice. As the outcome of a complaint they were allowed to resubmit the whole petition as a fourth submission.

The fourth submission was delayed because the Organisers failed to follow instructions. They were asked to submit hard copies of all the signatures to the post room. They submitted them by email instead. This was rejected by the Council. The final submission still contained many out of area and invalid signatures despite the Organisers now being aware at the fourth attempt at submission that they needed to weed out all out of area signatures.

Revocation

The Council is allowed to revoke planning permissions if it is **expedient** to do so and other material considerations (such as cost to the Council of compensation) is taken into account. In layperson's terms the Council had to carry out a "cost/ benefit" analysis. What was the benefit to the district and what were the costs to the District of the revocation?

What was the claimed benefit of revocation? - It is very difficult to work out what the Petition Organisers say the benefits of revocation are. The Council examined the Statement of Case dated 15 February 2021 in detail and could not see what the claimed benefits of revocation or modification were - the only benefit claimed was that it would allow the developers to resubmit fresh planning applications and that it would help with the Local Plan Review.

What was the claimed cost of compensation? -The Council also looked at the Statement of Case to see what the Petition Organisers claimed to be the cost of compensation to the Council. They say that in the case of two permissions no compensation would be payable and in the case of the other two permissions limited compensation would be payable. The "limited "amount was not stated or even estimated and yet they felt able to say that the amount could be accommodated within normal Council budgetary procedures.

In short there was no cost benefit analysis by the petitioners in the eight pages of the Statement of Case prepared for them by their representative, who is an experienced planning professional and who incidentally had been Arun's Head of Planning.

On the other hand, the Council could find no benefit for revocation and estimated the cost of revocation to be in the region of over £60m. This was contained in a detailed report supported by advice from an external QC. The documents before Full Council are attached as a link to this report.

Particulars of benefit

In this regard it should be noted that the Petitioners do not say that a revocation of these Outline Planning Permissions 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 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

In other words, the benefit is to allow the Local Plan Review to be conducted properly and to allow reconsideration of the existing outline planning permission when the developers resubmit their planning applications after revocation. In short, it was to allow the community to make representation of support or objection to the planning applications if the applications were resubmitted in the same way. This is a very odd benefit as objectors and supports had already had their say on these applications. The benefit was a second bite at the cherry.

Particulars of Compensation

The petitioners acknowledged that compensation was payable but alleged that In the case of permissions 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 and that In the case of permissions 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

The Officer report to Full Council was accompanied by comments made by the Developers and their representatives in response to the Petition. The QC for one of the Developers dismissed the Petitioners' reasoning as "muddled and opaque" In relation to compensation the developers gave reasoned argument for their claims. Paghams Homes and Vidid Homes claimed to have spent £600,000 and would make a claim of at least £20m in compensation. There was no way of refuting this.

In the case of Taylor Wimpey, they claimed to have incurred costs of over £400,000 and Hallam Land Management stated by their QC that their claim would be "*well over eight figures*"

Therefore, on a cost benefit analysis, the Council was right not to agree to the revocation. This is not to say that the Petitioners did not have a case. The Petition Organisers failed to make any case at all considering that they had all the time to prepare their case before presenting the petition.

Officers obtained external legal advice to evaluate the advice set out by the Developers and their advisers and to advise the Council. The QC having considered the Statement of Case advised that the Statement of Case had "no sound basis for revocation" and agreed with the reasoning of the Developers' QC. The case for revocation or modification had not been made.

Whether the Interim MO presentation to Council on 14 July was defective in not making reference to modification

The allegation is that the Interim MO *"misled our Councillors purposely with false information and used it as a scare-mongering tac-tic. He failed completely to represent our petition in a fair and unbiased manner and we have the paperwork as evidence to prove it"*.

Firstly the Petition Organiser had five minutes to present their own case and failed to do so. Secondly the MO presentation was not defective in not making reference to modification as the Petitioners own statement of case was about revocations and in the statements below they do not make reference to modification. The action requested by the Petitioner is set out in their statement of case. It says (emphasis added) in the second paragraph

*"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"*

The third paragraph of the statement of case says

*"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 8th paragraph of the statement of case says

"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".*

Thus, the MO was mirroring the wording found in the Statement of Case. This allegation is rejected as being spurious.

The second matter for review is that the MO *"continues to refuse to release the disclaimed votes for our perusal and has delayed our ongoing complaint prior to the Ombudsman being involved for so long, he is actually out of time.*

Arun have refused to hand over 1,300 signatures, which they state are unacceptable and not given reasons as to why".

This is denied. On 9 June 2021 the Petitioner submitted an FOI request. On 26 July 2021 the FOI request was returned with the information requested. This showed that contrary to their email of 22 March 2021 which stated that a bookkeeper had validated the signatures there were well over half of the signatures which were out of area and obviously so. These were not just marginally out of area. The list shows signatures from Australia, USA, Southampton, Woking, Brighton, London, Portsmouth etc.

The FOI response is attached as appendix 3.

September 2021

Appendix 2
Organisers' Request for a Review by Audit and Governance Committee

Appendix 3
FOI request and Response