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Planning Casework Unit,
Department for Levelling Up, Housing and Communities
By email to:
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18 March, 2024

To: Planning Casework Unit

Call-In Request re Planning Application K/46/23/PL submitted to Arun District Council
Relating to Land north-east of Kingston Lane, Kingston Lane for the Erection of 47 No residential dwellings including 14 affordable homes. (Resubmission following K/56/22/PL).

Kingston Parish Council is requesting that this planning application is called in for determination by the Secretary of State.

The application is to build 47 new homes on Grade 1 agricultural land and it is due to be considered by Arun District Council Planning Committee on 20 March, 2024 so please could relevant action be taken under the Town and Country Planning (Development Management Procedure) (England) Order 2015, Section 31 to prevent Arun District Council approving the application before the Secretary of State has considered this request.

Our reasons for requesting the call-in are:

- It raises issues which appear to conflict with national policies on important matters, including the National Planning Policy Framework (NPPF); and
- it could have significant effects beyond its immediate locality;
- it sets a principle that the NPPF policies relating to high grade agricultural land are not being given the correct weight in determining local planning applications

The site of this application is Grade 1 agricultural land – the best. Whether the development on high grade agricultural land is small or large, each loss contributes to the ever-growing cumulative loss. Protection of high grade agricultural land is important to the sustainability of this area and indeed to the whole country. The NPPF policies aim to give this protection and need to be respected.

Council considers the application is contrary to the National Planning Policy Framework, in particular Paragraph 180 b) of the NPPF the provides that planning decisions should recognise, amongst other matters;

“... the economic and other benefits of the best and most versatile agricultural land.”

Paragraph 181 goes on to require that, where a national hierarchy of site designation is defined, land with the least value is to be preferred for development. Footnote 62, referred to in paragraph 181, explains that:

“Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development where development of agricultural land is demonstrated to be necessary, areas of poorer quality land are to be preferred over those of higher quality”

Residential development of the land would be in serious conflict with the Arun District Council development plan:

- The site is not allocated for residential development in the Arun Local Plan 2018.
- It is outside the defined Built-up Area Boundary, within which Policy SD SP2 says development is to be focussed.
- It lies within the Countryside, where only development meeting one of the 6 criteria set out in policy C SP1 is to be permitted.
- The proposed site is an important part of the defined settlement gap between East Preston and Ferring that the parish of Kingston sits within.
- The proposed development would conflict with Policy SD SP3 as all the criteria listed in that policy would not be met.
- The proposed development would conflict with Policy SO DM1 relating to Soils.

In the material submitted with the original application, the applicant acknowledges these policy conflicts. Its case in support of the proposed development is essentially that any such conflicts with the development plan should be set aside because of a current shortfall in housing land supply. However, this approach is not consistent with the amended legislative framework set out in the Levelling Up and Regeneration Act (enacted 26 October, 2023). This has fundamentally altered the wording and effect of section 38 of the Planning and Compensation Act 2004 regarding the role of the Development Plan.

Chapter 2, Paragraph 93 of the Act amends section 38 of Planning and Compensation Act 2004 by adding sub-section 5B. This provides that, in deciding an application for planning permission:

*“... the determination **must** be made in accordance with the development plan **and any national development management policies**, unless material considerations **strongly** indicate otherwise.”* (emphasis added).

It also adds sub-section 5C, as follows:

“If to any extent the development plan conflicts with a national development management policy, the conflict must be resolved in favour of the national development management policy.”

These legislative changes greatly strengthen the importance of the development plan, whose policies **must** now be followed unless material considerations **strongly** indicate otherwise. They also fundamentally increase the status of National Development Management Policies (such as those set out in the National Planning Policy Framework). These now have statutory status, rather than being simply “other material considerations”. Furthermore, any conflict between the provisions of a development plan and a national development management policy is to be resolved in favour of the latter.

Paragraph 180 b) of the NPPF provides that planning decisions should recognise, amongst other matters;

“... the economic and other benefits of the best and most versatile agricultural land.”

Paragraph 181 goes on to require that, where a national hierarchy of site designation is defined, land with the least value is to be preferred for development. Footnote 62, referred to in paragraph 181, explains that:

“Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development where development of agricultural land is demonstrated to be necessary, areas of poorer quality land are to be preferred over those of higher quality.”

The application site is acknowledged to be of the highest category in agricultural land value terms, identified as Grade 1. In this context the NPPF requires that the application site should only be considered for development if no land of lower quality is available. Even if it is accepted that some agricultural land may need to be identified for development in the District, the Officers Report confirms that no assessment has been undertaken which demonstrates that no land of lesser agricultural quality than the application site is available (8th paragraph on page 77 of the Report).

In the last paragraph on page 83 the Officers Report recommending approval of the application, draws a comparison in agricultural land quality terms with development south of Littlehampton Road and east of Worthing Rd Angmering [reference A/168/21/PL]. Planning permission for residential was granted on appeal in that case but the circumstances there are significantly different from those at the Kingston Lane site, in at least 3 ways.

1. The agricultural land quality of the Angmering site was Grade 2, whereas the Kingston Lane site is of higher quality, Grade 1.
2. The Angmering appeal was decided before the enactment of the 2023 Act so that the specific changes to section 38 of the 2004 Act were not in play at that time. They are now.
3. A very recent judgement of the High Court (16 February 2024) has found that it was not irrational to find against a development on agricultural land terms where there had been no adequate assessment of potential alternative sites, notwithstanding that inherent difficulty of doing so. (LULLINGTON SOLAR PARK LTD v SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES and SOUTH DERBYSHIRE DISTRICT COUNCIL). [2024] EWHC 295 (Admin)

It seems inconceivable that any comprehensive assessment of the availability of potentially developable land in the Arun District could reasonably conclude that no land of lower agricultural quality than the Grade 1 of the application site is available for development. It follows, therefore, that the proposed development of the Grade 1 land of the application site would amount to a fundamental conflict with the national development management policy set out in paragraphs 180 and 181, and footnote 62, of the NPPF.

There are, as the Officers Report points out, clear conflicts with development plan policies relating to the Built Up Area Boundary, safeguarding the Countryside and Gaps Between Settlements. These conflicts, and especially the loss of Grade 1 agricultural land contrary to the clear policy of the NPPF in this regard, amount to compelling reasons for refusing planning permission for the proposed development.

Although the 47 dwellings proposed could be said to make some limited contribution to the alleviation of any numerical shortfall in housing provision locally, this would be modest. In view of the nature and extent of the policy conflicts, it cannot reasonably be concluded that this modest contribution would amount to a consideration of such strength that it would justify setting aside the relevant development plan and national development management policies, with which the proposed development would clearly conflict.

Please see the Appendices attached separately that set out our objections as submitted to Arun District Council, and the Officers Report due to be considered by the Arun District Planning Committee on 20 March, 2024 that is recommending approval subject to a Section 106 Agreement.

To reiterate, Kingston Parish Council would like to request

- a call-in for this planning application; and
- could relevant action be taken under the Town and Country Planning (Development Management Procedure) (England) Order 2015, Section 31 to prevent Arun district Council approving the application before the Secretary of State has considered this request.

Yours sincerely

Val Knight

Mrs Val Knight
Clerk of Kingston Parish Council

SEE

APPENDIX 1 Arun Officers Report

APPENDIX 2 Kingston PC objection to application December 2023

APPENDIX 3 Kingston PC additional objection to application February 2024

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