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28 March, 2024

Further to our first submission request made on 18 March, 2024, this request wording has been revised following the decision by the Arun District Planning Committee on 20 March, 2024 to conditionally approve the application.

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
- Further it is not clear how weightings are being applied across the application as a whole

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.

That this is of national interest is clear in an extract from Hansard transcripts of parliamentary debate on 20 March, 2024:

“Sir Peter Bottomley

Mr Speaker, you and the Prime Minister will be welcome in the Arun district of my

constituency, where developers are trying to build over every vineyard, horticultural nursery and piece of agricultural land. Will he point out that the last place to build homes is prime agricultural land, especially in an area where developers have enough permissions to meet the council's targets for the next five years?

The Prime Minister

My hon. Friend is right that sustainable development must be at the heart of our planning system. That is why we are committed to meeting the housing needs of our communities by building the right homes in the right places, making sure that everyone makes best use of brownfield land, conserving our countryside. That is also the point he makes, which is important. I have been crystal clear: we must protect agricultural land. Food security is incredibly important and we need our farmers to produce more Great British food.”

Further to the above, this Council adds that it understands developers are sitting on land in the Arun District Council area for which planning permission has already been granted for over 5,000 properties but no building has yet commenced. How is this compatible with how the 5-year land supply is being assessed against the loss of Agricultural land and other policies of the Arun Local Plan?

Council considers the application K/46/23/PL is contrary to the National Planning Policy Framework, in particular 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”

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. This is also contrary to NPPF Para 180 b “recognising the intrinsic character and beauty of the countryside”
- The proposed site is an important part of the defined settlement gap between East Preston and Ferring that the parish of Kingston sits within. It is important for the community’s sense of identity that the gaps between itself and East Preston and Ferring are also maintained. The proposed development lies within Kingston Parish but abuts the boundary with East Preston Parish. So, there will no longer be a Gap between our communities at this point. Further, it may lead to a false perception that the new build is part of East Preston and not Kingston and that does not fit well with nurturing a community’s sense of identity. It is important to resist creeping coalescence between local communities.

- The proposed development would conflict with Policy SD SP3 (re Gaps between Settlements) as all the criteria listed in that policy would not be met.
- The site is situated within an area prone to flooding
- The proposed development would conflict with Policy SO DM1 relating to Soils. This is also contrary to NPPF Para 181.

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:

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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 by the applicant 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 use 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)

Whilst attention is drawn to the A/168/21/PL granted on Appeal, the Officers Report fails to mention that a closer site to the east of the application has had 3 applications to build on it refused on Appeal (2 were for one dwelling and one for stables and a large barn). Whilst not comparable in size to K/46/23/PL it would have highlighted that, at Appeal, Planning Inspectors have recognised the importance of the Gap between Settlements and the land and countryside within it. The most recent of these application - K/22/22/PL for stables and barn - was refused on Appeal in August, 2023 with “the development would have a significant adverse impact on the character, appearance and function of the East Preston and Ferring gap” and “Regard should also be had to the intrinsic character and beauty of the countryside and sense of place. Additionally, development should not individually or cumulatively compromise the integrity of the gap or undermine physical or visual separation between settlements” and “This would cause material harm to the character, appearance and function of this particular part of the countryside which is in a finite designated gap. These are important environmental considerations which I consider have significant weight against the development.”

Nor does the Officers Report make fully clear the reasons why the previous application on this site (K/56/22/PL for 48 dwellings) was refused by Arun only a few months ago in April, 2023. They included “The site comprises Grade 1 Agricultural Land and it has not been satisfactorily demonstrated that there is an overriding need for the development in this particular location in conflict with policy SO DM1 of the Arun Local Plan and para 174 of the NPPF” and “ The proposed development, by way of its layout, built form orientation, location and usability of public open space, would result in harm to the countryside setting and would fail to enhance the character and appearance of the site. The proposed development therefore fails to accord with policies D DM1, D SP1, H DM1, OSR DM1 of the Arun Local Plan, the Arun Design Guide and the NPPF.”

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.

This Council is concerned that the Officers Report in addressing the weight to be attached to sometimes competing policies in the NPPF (housing supply vs agricultural land for example) is not clearly explained in such a way that we or our residents can form an opinion on exactly how the weightings were applied to reach the recommendation made to the Arun District Planning Committee to conditionally approve the application.

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 considered by the Arun District Planning Committee on 20 March, 2024.

As an update, the Arun District Planning Committee agreed conditional approval subject to a Section 106 Agreement of the application (K/46/23/PL) when it met on 20 March, 2024. This led to a further exchange in the House on the 21 March, 2024 as recorded in Hansard:

“Sir Peter Bottomley

The Leader of the House may have heard me question the Prime Minister yesterday about planning and building over prime agricultural fields. Yesterday afternoon, Arun District Council planning committee considered an application. All the members of the committee looked as though they were going to turn it down, until the planning officer said the costs of an appeal by the developer were more than the Council could afford. All the members of the committee, except for the Conservatives and one Liberal, then voted to leave it to the council planning officers to make the decision.

Can we have a debate on intimidation on costs by developers that make district and borough councils feel they have to approve something or allow something to go through that should be opposed? Will the Leader of the House join me in recommending the council calls in the proposal and, if it does not, the Secretary of State does?

Penny Mordaunt

On planning, the Father of the House raises a worrying concern. I am sure the Secretary of State for Levelling Up, Housing and Communities will be concerned to hear that people are not shouldering the responsibilities to which they were elected. I will ensure he has heard what my hon. Friend has said.”

How relevant is taking into account the possibility of Appeal costs when deciding an application? What is the weighting given to it in the planning decision process? Is this happening across the country?

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

PLEASE SEE Full Background Information

APPENDIX 1 Arun Officers Report

APPENDIX 2 Kingston PC objection to application December 2023 in detail

APPENDIX 3 Kingston PC additional objection to application February 2024 in detail

Views of the site and access:

