

Agenda Item P 78.15(1)  
28<sup>th</sup> May 2015.

**Louise Chater**

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**Subject:** FW: SY/14/02186/OUTEIA Selsey  
**Attachments:** circularconsultationdirect.pdf

Sent: 19 May 2015 18:37

To: 'Joanna Bell'; 'Andrew Frost'; 'Steve Carvell'; 'Jeremy Bushell'

Subject: FW: SY/14/02186/OUTEIA Selsey

Dear All

Further to my last I thought it might be helpful to you and of interest to all our readers if I attached a copy of the 2009 Direction to which I referred so that this can be posted alongside my e mail on your web site.

Thanks

Paul Collins

[cid:image005.jpg@01D09263.24C93C90]

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From: paul collins

Sent: 19 May 2015 17:17

To: 'Joanna Bell'

Cc: 'Andrew Frost'; 'Steve Carvell'; 'Jeremy Bushell'

Subject: RE: SY/14/02186/OUTEIA Selsey

Dear Ms Bell

Thank you for your response.

Firstly your account of the Planning Committees resolution on 29 April 2015 is entirely and materially different from that based on first-hand accounts, that recounted to me over the telephone on the afternoon of 29 April 2015 by your Committee Services department based on the notes made by the relevant Committee Clerk and that reported in the press. As I said in my original e mail these all indicate that the Committee resolved that the application should be refused for reasons relating to the impact of the scheme on the local Highway network and the viability of Selsey town centre and that the issuing of the decision be delegated to officers subject to no further representations being received as a result of the statutory advertisement period for the EIA expiring on 30 April 2015. The Applicants submissions did not relate to or amount to a representation for these purposes.

Regrettably, however, I note that the minutes of the meeting (no doubt accurately and independently kept by the Councils committee services) remain unpublished so I can only note what you now say for later reference if required but obviously if the minutes do, when published, record matters differently from that based on first-hand accounts, that recounted to me over the telephone on the afternoon of 29 April 2015 by your Committee Services department and that reported in the press further serious questions will need to be asked.

Secondly what you say in the fourth paragraph of your e mail is demonstrably incorrect by reference to case law. It is correct to say that the maximum amount of development (in this case up to 144 dwellings) was for consideration and would have been fixed if an approval had been granted the actual amount is not fixed or for consideration when the description "up to" is used. Indeed the entire purpose of using the phrase "up to" in an outline planning application description (as established in case law) is to avoid any such possibility that the actual quantum of development is fixed at outline application stage.

In such circumstances and law whilst the maximum number of dwellings and site area could not be exceeded when making reserved matter applications pursuant to such a permission so described, a lesser number of dwellings (up to 139 dwellings for example) on a smaller or the same site area could be accepted within reserved matter applications for scale, layout appearance and landscaping pursuant to such an outline permission so it therefore follows that changes to an indicative layout resulting in a lesser number of dwellings (unrelated to any matter which led the Committee to resolve to refuse the application at its April meeting) is not a material amendment as you assert. Clearly if officers and members raised no objections or refusal reasons to the maximum number of 144 dwellings proposed, amendments which result in a lesser maximum number of dwellings being proposed for the same site area is not an amendment that should be viewed as being material by officers or worthy of reconsideration by the Committee and no doubt the many people and organisations that previously made representations will repeat these so that Members will be left in no doubt that there is no basis for making a decision which differs from their original resolution.

Once again, I, however, can only note what you incorrectly assert for future reference if it becomes necessary to test your assertions in a court of law.

Finally I will await your (somewhat belated) response to my question originally asked in my email of 13 August 2014 in relation to referral to the Secretary of State with interest.

Please place a copy of this e mail exchange on your public file and ensure that my e mails are recorded in your committee report as representations.

Thank you

Paul Collins

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Paul Collins MRTPI

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From: Joanna Bell  
Sent: 19 May 2015 15:53  
To:  
Cc: Andrew Frost; Steve Carvell; Jeremy Bushell  
Subject: FW: SY/14/02186/OUTEIA Selsey

Dear Mr Collins,

Thank you for your email with regard to application SY/14/02186/OUTEIA - Park Farm, Park Lane, Selsey.

As you are aware an amended plan and accompanying letter were received from the applicant following the Planning Committee's resolution on 29 April, that it was minded to refuse the application. The revised plan was received following expiration of the environmental impact assessment regulations publicity period (close of normal office hours on 30 April 2015) and before the decision was issued.

Officers considered the revised information in light of the Committee resolution and were of the view that the proposed changes resulted in an application which was materially changed from that on which the Committee based its resolution and on this basis it was appropriate to accept the amendment. In this regard, officers have undertaken further consultation and publicity in relation to the revised application details. Following completion of this consultation, the revised application is, as you may be aware, being referred back to Committee for determination on 27 May.

With regard to the extent to which the amendments are material to the application, I have to advise that contrary to your assertion, the number of dwellings does form part of the application. Although the application has been submitted in outline form, with access being the only matter for approval at this stage and all other information submitted as illustrative, the quantum of development included in the description of the development is for consideration. The original description refers to a

development of up to 144 dwellings and on this basis the Council needs to be satisfied that this level of development can be delivered. The illustrative layout plan is an important means by which to demonstrate whether the level of development proposed can be successfully achieved on the site.

Finally, with regard to your question originally asked in your email of 13 August in relation to referral to the Secretary of State we will come back to you on this as soon as possible.

Kind regards,

Jo Bell

Joanna Bell

Development Manager (Majors)

Development Management

Chichester District Council

Tel: 01243 534899 | Fax: 01243 776766 | [jbelle@chichester.gov.uk](mailto:jbelle@chichester.gov.uk) |

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From: Jane Polden On Behalf Of Steve Carvell

Sent: 11 May 2015 17:52

To: paul collins

Subject: RE: SY/14/02186/OUTEIA Selsey

Dear Mr Collins

I am afraid Mr Carvell is, too, away from the office but just for today. I will ensure he sees your email tomorrow.

With kind regards

Jane Polden

Jane Polden

PA to the Chief Executive and Leader

PA to the Head of Finance & Governance

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From: paul collins

Sent: 11 May 2015 13:58

To: DCPlanning

Cc: Steve Carvell

Subject: FW: SY/14/02186/OUTEIA Selsey

Importance: High

Dear Mr Carvell

I have received an out of office reply from Mr. Bushell in respect of this e mail which states that he does not return to the office until 19 May.

Therefore please can you place a copy of this e mail and enclosure on your web file and provide a response explaini9ng why Officers appear to be disregarding the resolutions and decisions made by the Planning Committee.

Thank you

Paul Collins

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Paul Collins MRTPI

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From: paul collins [mailto:ppcplanner@btinternet.com]  
Sent: 11 May 2015 13:38  
To: 'jbushell@chichester.gov.uk'  
Subject: FW: SY/14/02186/OUTEIA Selsey

From: paul collins [mailto:ppcplanner@btinternet.com]  
Sent: 11 May 2015 13:30  
To: 'jeremy.bushell@chichester.gov.uk'  
Subject: SY/14/02186/OUTEIA Selsey

Dear Jeremy

I have tried ringing and left several messages but you have not returned my calls.

I note that this application was considered by your Planning Committee on 29 April 2015 when the Committee resolved that the application should be refused for reasons relating to the impact of the scheme on the local Highway network and the viability of selsey town centre and that the issuing of the decision be delegated to officers subject to no further representations being received as a result of the statutory advertisement period for the EIA expiring on 30 April 2015. I note that the minutes have still not been published but I was advised by your Committee services team on the afternoon of 29 April 2015 that this was the decision.

I now note that the applicants have submitted a revised illustrative layout plan so as to accommodate the dog-walking track entirely within the confines of the application site and that this has the effect of altering the description from

"Hybrid planning application for comprehensive mixed use development of land at Manor Road. Full application for Class A1 foodstore, car parking, Class A3/A4 pub/restaurant, petrol filling station, new access, landscaping and ancillary works. Outline planning application for up to 144 dwellings, hotel, Class D1 building, open space, landscaping and new access"

to

"Hybrid planning application for comprehensive mixed use development of land at Manor Road. Full application for Class A1 foodstore, car parking, Class A3/A4 pub/restaurant, petrol filling station, new access, landscaping and ancillary works. Outline planning application for up to 139 dwellings, hotel, Class D1 building, open space, landscaping and new access".

By letter dated 30 April 2015 the applicants agents "Mango Planning & Development Limited" assert that:

"This represents a material change to the application proposal reported to committee yesterday. As such, both within the clear terms of the resolution of yesterday's committee and the principles set

out in R (on the application of Kides) v South Cambridgeshire District Council [2002] EWCA Civ 130; [2002] 4 PLR 66 officers are obliged to re-report the amended application back to the Planning Committee for further consideration".

Firstly I draw you attention to paragraphs 121 - 125 in particular of that judgment ( copy attached for ease of reference) and point out that the judgment does not, in fact, support the assertion made. To the contrary the judgement makes it clear that it is the circumstances of the case and the materiality of the change that affects whether or not further consideration is required.

Secondly, in the current case the number of dwellings did not form part of the application ( this part of the application was made in outline for up to 144 dwellings) and the plan now revised did not form part of the application either so neither matter are of sufficient materiality to justify officers being "obliged to re-report the amended application back to the Planning Committee for further consideration" as the applicants agents incorrectly assert particularly as their "representation" does not arise from any EIA matter or indeed relate to any material matters that led to the Committee decision.

Please can you therefore advise when the Council will issue the decision made by the Planning Committee in accordance with its resolution and if not why officers have decided not to follow that resolution.

Thanks

Paul Collins  
[cid:image009.jpg@01D09263.24C93C90]

Paul Collins MRTPI  
T: 07709993015  
E:ppcplanner@btinternet.com

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30 March 2009

## Circular and Direction

# THE TOWN AND COUNTRY PLANNING (CONSULTATION) (ENGLAND) DIRECTION 2009

### **INTRODUCTION**

1. Section 77 of the Town and Country Planning Act 1990 allows the Secretary of State to give directions requiring applications for planning permission, or for the approval of any local planning authority required under a development order, to be referred to her instead of being dealt with by local planning authorities.
2. Article 10(3) of the Town and Country Planning (General Development Procedure) Order 1995 gives the Secretary of State power to issue directions to local planning authorities requiring them to consult with specified persons before granting planning permission for certain types of development. Article 14(1) gives the Secretary of State power to issue directions restricting the grant of planning permission in respect of specified development – either indefinitely or for a specified period. This circular replaces the provisions contained in existing directions, and introduces a new requirement relating to development which may adversely impact on World Heritage Sites. The circular is intended to ensure that ministerial involvement takes place only where necessary, and that all decisions are taken at the appropriate level.

### **COMMENCEMENT AND EXTENT**

3. With effect from 20 April 2009 the guidance contained in this circular and the annexed direction will replace the provisions of the following directions, which will be cancelled, insofar as they apply in relation to England:
  - Circular 15/93: Town and Country Planning (Shopping Development) (England and Wales) (No 2) Direction 1993
  - Circular 09/98: Town and Country Planning (Playing Fields) (England) Direction 1998

- Circular 07/99: The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999
- Circular 11/05: The Town and Country Planning (Green Belt) Direction 2005; and
- Circular 04/06 (Communities and Local Government): The Town and Country Planning (Flooding) (England) Direction 2007

4. This circular applies only in relation to England.

#### **THE DIRECTION**

5. A copy of the direction, which comes into force on 20 April 2009, forms the annex to this circular. When the direction comes into force, it will require local planning authorities in England to consult the Secretary of State before granting planning permission for certain types of development. It will not affect the Secretary of State's power under section 77 of the Town and Country Planning Act 1990 to direct that any particular planning application should be called in for her own determination, irrespective of whether it falls within the terms of the new direction, having regard to her policy on call-in.

#### **PURPOSE AND SCOPE**

6. The new direction clarifies the arrangements and criteria for consulting the Secretary of State. The purpose of the direction is to give the Secretary of State an opportunity to consider whether to exercise her call-in powers under section 77. It also simplifies the process, consolidating all requirements into a single new direction. The effect of the direction is to require local planning authorities to refer any application for planning permission which falls within paragraphs 3-8 of the direction, and in respect of which the authority does not propose to refuse planning permission, to the Secretary of State at the appropriate regional government office, in accordance with the provisions in paragraphs 9-12 of the direction.

#### **WORLD HERITAGE SITES**

7. The direction introduces a new requirement for local planning authorities to refer applications where they are minded to grant planning permission in circumstances where English Heritage has objected on the grounds that a proposed development could have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent, and has not withdrawn that objection.

MRS H.C. COLCHESTER  
 Head of Planning Central Casework Division  
 Communities and Local Government

# THE TOWN AND COUNTRY PLANNING (CONSULTATION) (ENGLAND) DIRECTION 2009

The Secretary of State for Communities and Local Government (“the Secretary of State”), in exercise of powers conferred by articles 10(3), 14(1) and 27 of the Town and Country Planning (General Development Procedure) Order 1995<sup>1</sup> (“the Order”) directs as follows:

1. This Direction shall come into force on 20 April 2009 and shall apply to applications for planning permission relating to land in England received on or after that date.

2. In this Direction –

“flood risk area” means land in an area within –

- (a) Flood Zones 2 or 3; or
- (b) Flood Zone 1 which has critical drainage problems and which has been notified for the purposes of article 10 of the Order to the local planning authority by the Environment Agency;

“Flood Zone” has the same meaning as in article 10(2)(o) of the Order;

“floor space” means the gross floor space in a building or buildings measured externally;

“inappropriate development” has the same meaning as in Planning Policy Guidance note 2: “Green Belts”, dated January 1995 (PPG2) or any successor document;

“major development” means –

- (a) in respect of residential development, a development where the number of dwellings to be provided is 10 or more; or the site area is 0.5 hectares or more;
- (b) in respect of non-residential development, a development where the new floor space to be provided is 1,000 square metres or more, or the site area is 1 hectare or more;

“edge-of-centre” means, for retail purposes, a location that is well connected to and within easy walking distance (i.e. up to 300 metres) of the primary shopping area and, for all other main town centre uses, is likely to be within 300 metres of a town centre boundary;

“out-of-centre” means a location which is not in, or on the edge of, a town centre but not necessarily outside the urban area;

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<sup>1</sup> S.I. 1995/419 to which there are amendments not relevant to this direction

“out-of-town” means an out-of-centre development outside the existing urban area;

“playing fields” has the same meaning as in article 10(2)(l) of the Order;

“requisite notice” means notice in the appropriate form set out in Schedule 3 to the Order or in a form substantially to the same effect; and

“setting” means the area around a World Heritage Site (including any buffer zone or its equivalent) in which development is capable of having an adverse impact on the World Heritage Site, including an adverse impact on views to and from the World Heritage Site.

3. This Direction shall apply in relation to any application for planning permission which –
  - (a) is for Green Belt development, development outside town centres, World Heritage Site development, playing field development or flood risk area development; and
  - (b) is received by a planning authority on or after 20 April 2009.
4. For the purposes of this Direction, “Green Belt development” means development which consists of or includes inappropriate development on land allocated as Green Belt in an adopted local plan, unitary development plan or development plan document and which consists of or includes –
  - (a) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
  - (b) any other development which, by reason of its scale or nature or location, would have a significant impact on the openness of the Green Belt.
- 5.(1) For the purposes of this Direction, “development outside town centres” means development which consists of or includes retail, leisure or office use, and which –
  - (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and
  - (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and
  - (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
    - (i) 5,000 square metres or more; or
    - (ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres.

- (2) In calculating the area of existing floor space for the purposes of development referred to in paragraph 5(1)(c)(ii) this shall include retail, leisure or office floor space situated within a 1 kilometre radius of any part of the same type of use to be comprised in the proposed development and –
- (a) is already provided;
  - (b) has been substantially completed within the period of 5 years immediately preceding the date an application for development to which this Direction applies is received;
  - (c) in respect of which an application for planning permission has been made but not finally determined on the date an application for development to which this Direction applies is received; or
  - (d) in respect of which an application for planning permission has been granted within the period of 5 years immediately preceding the date an application for development to which this Direction applies is received.
6. For the purposes of this Direction, “World Heritage Site development” means development which would have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site or its setting, including any buffer zone or its equivalent, and being development to which English Heritage has objected, that objection not having been withdrawn.
7. For the purposes of this Direction, “playing field development” means development of a description mentioned in paragraph (z) of the Table<sup>2</sup> in article 10 of the Order where –
- (a) the land (or any part of the land) which is the subject of the application –
    - (i) is land of a local authority; or
    - (ii) is currently used by an educational institution as a playing field; or
    - (iii) has at any time in the five years before the application is received been used by an educational institution as a playing field; and
  - (b) the English Sports Council (“Sport England”) has been consulted pursuant to article 10(1) of the Order, and has made representations objecting to the whole or part of the development on one or more of the following grounds –
    - (i) that there is a deficiency in the provision of playing fields in the area of the local authority concerned;
    - (ii) that the proposed development would result in such a deficiency; or

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<sup>2</sup> Paragraph Z was inserted by S.I. 1996/1817.

- (iii) that where the proposed development involves a loss of a playing field and an alternative or replacement playing field is proposed to be provided, that alternative or replacement does not match (whether in quantity, quality or accessibility) that which would be lost.
8. For the purposes of this Direction, “flood risk area development” means major development in a flood risk area to which the Environment Agency has made an objection that it has not been able to withdraw even after discussions with the local planning authority.
9. Where a local planning authority does not propose to refuse an application for planning permission to which this Direction applies, the authority shall consult the Secretary of State.
10. Where, by virtue of paragraph 9, a local planning authority is required to consult the Secretary of State, they shall as soon as practicable send to the Secretary of State at the appropriate Government Office for the Region –
- (a) a copy of the application (including copies of any accompanying plans, drawings and any appropriate flood risk assessment) and supporting information;
  - (b) a copy of the requisite notice;
  - (c) a copy of any representations made to the authority in respect of the application;
  - (d) a copy of any report on the application prepared by an officer of the authority;
  - (e) unless contained in a report supplied pursuant to sub-paragraph (d), a statement of the material considerations which the authority consider indicate a departure application should be determined otherwise than in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004<sup>3</sup>.
11. Subject to paragraph 12 below, where, by virtue of paragraph 9, a local planning authority is required to consult the Secretary of State, they shall not grant planning permission on the application until the expiry of a period of 21 days beginning with the date which the Secretary of State tells the authority in writing is the date she received the material specified in paragraph 10 above.
12. If, before the expiry of the 21 day period referred to in paragraph 11, the Secretary of State has notified the authority that she does not intend to issue a direction under section 77 of the Town and Country Planning Act 1990 in respect of that application, the authority may proceed to determine the application.
13. The following directions are cancelled –
- (a) Circular 15/93: Town and Country Planning (Shopping Development) (England and Wales) (No 2) Direction 1993;

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<sup>3</sup> 2004 c. 5.

- (b) Circular 09/98: Town and Country Planning (Playing Fields) (England) Direction 1998;
- (c) Circular 07/99: The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999;
- (d) Circular 11/05: The Town and Country Planning (Green Belt) Direction 2005;  
and
- (e) Circular 04/06 (Communities and Local Government): The Town and Country Planning (Flooding) (England) Direction 2007.

Signed by authority of the Secretary of State

Mrs H.C. Colchester  
Head of Planning Central Casework Division  
Communities and Local Government

30 March 2009



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