

Recommendation Report for Removal of a Planning Obligation

REF NO:	AL/13/18/PO
LOCATION:	Nyton Nursery Nyton Road Aldingbourne
PROPOSAL:	Application for the Modification of Planning Obligations imposed on planning reference AL/102/17/RES dated 20/11/14 relating to the removal of Strategic Highways Infrastructure Contribution & the revision to the Affordable Housing Mix (remains at 30%)

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks the variation of the s106 agreement signed under planning application AL/61/13/ through the removal of the Strategic Highways Infrastructure Contribution and variation of the affordable housing mix.
SITE AREA	Approximately 11.64 hectares.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	18dph
TOPOGRAPHY	Site slopes down gradually from north to south.
TREES	Many within the site and forming the boundary to the western edge. Significant line of trees running north-south from the southern part of the site. A Tree Preservation Order (TPO/AL/13) covers an ash tree and evergreen oak located in the south western corner of the site.
BOUNDARY TREATMENT	The eastern boundary of the site is kept by a hedgerow which supplements low level post and wire fencing. Northern boundary kept by various fencing, intermittent hedging and a row of trees to the north-west corner. Southern boundary kept by mature hedging, low level wire fencing in part and fencing. Part of the western boundary is kept by domestic boundary hedging/fencing to the larger residential curtilages within Northfields Lane and the north part by a country lane with open farmland beyond.
SITE CHARACTERISTICS	The site was predominantly in agricultural use with a large part of the land previously in use as grazing land with a barn and storage area for farm machinery/equipment centrally located within the site. Existing horticultural use was located to the south-west corner of the site. The use included greenhouses with growing areas and a residential property which is associated with the

nursery. The greenhouses have been demolished.

The north-west corner of the site is in use for the keeping of horses with stables and associated hard-standing.

Accesses are currently available to the site from Fontwell Avenue, Nyton Road and Northfields Lane.

CHARACTER OF LOCALITY

Site is located on the edge of the settlement of Westergate. Residential properties line the southern boundary of the sites, these are a mix of 1 and 2 storey properties of varied designs.

Pig sheds, farmland and scrap yard to the north/north-east of the site with residential properties and Fontwell Racecourse beyond. To the east is the A29 with residential properties beyond.

Northfields Lane runs along the western boundary which provides a significant landscape buffer between the application site and the open arable farmland to the west.

RELEVANT SITE HISTORY

AL/102/17/RES	Application for approval of Reserved Matters following outline application AL/61/13/ for the demolition of existing glasshouses, bungalow, stables & outbuildings & residential development of 268 dwellings incl 30% affordable housing (incorporating 60 senior living units) with associated access, public open space & landscaping	ApproveConditionally 24-01-18
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AL/61/13/	Outline application with some matters reserved for the demolition of existing glasshouses, residential bungalow, stables and various outbuildings and residential development of up to 268 dwellings including 30% affordable housing (incorporating 60 Senior Living units), with associated access, public open space and landscaping. This is a Departure from the Development Plan.	Refused 14-02-14
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Appeal: Allowed+Conditions
23-02-15

The outline application (AL/61/13) was refused in February 2014 for the following reasons: outside the built up area boundary, lack of S106 undertaking in relation to affordable housing and other infrastructure requirements. Permission was granted on the 23 February 2015 following an appeal with a S106 agreement including on site affordable housing and open space and contributions towards swimming pool, sports hall, artificial pitches, NHS, public art, MUGA, Highway works, library, education, fire service, footways and cycleways, bus service funding and a Travel Plan.

The reserved matters relating to this application were approved under reference AL/102/17/RES on the

24th January 2018.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

None received.

COMMENTS ON REPRESENTATIONS RECEIVED:

N/A

CONSULTATIONS

WSCC Strategic Planning

Planning and Housing Strategy

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:

WSCC Strategic Planning:

In line with paragraph 128 of the Inspectors report on appeal ref: APP/C3810/A/14/2217385 no objection is raised.

Housing Strategy and Enabling Manager:

In terms of the provision of affordable housing there is no objection in principle. The inclusion of an extra care housing scheme for affordable housing is fully supported by the Council.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designation applicable to site:

Class A Road

Outside the Built-up area boundary

Area of special control on adverts

DEVELOPMENT PLAN POLICES

[Arun District Local Plan \(2003\):](#)

DEV17 Affordable Housing

[Publication Version of the Local Plan \(October 2014\):](#)

H SP2 Affordable Housing

[Aldingbourne Neighbourhood Plan 2016 POLICY H4](#)

10 or more to include 40% unless unviable

Affordable Housing

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

XXX6	Interim Affordable Housing Policy
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POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

A new local plan is in preparation and is a material consideration when determining Planning Applications. At this stage the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015.

A number of Main Modifications to the Arun District Local Plan 2011-2031 (Publication Version) October 2014 were approved by the Council on 22nd March 2017 and consultation on these has taking place. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification. The examination was completed in September 2017.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton. The written Ministerial Statement of 13 December 2016 confirms that relevant policies for the supply of housing in Neighbourhood Plans should not be deemed to be out of date where all of the following circumstances arise;

- The NDP has been part of the development plan for 2 years or less or the ministerial statement is less than 2 years old
- The NDP allocates sites for housing
- The Council can demonstrate a three-year supply of deliverable housing sites

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation(Reg.14).

The Aldingbourne Neighbourhood Plan has been made and policy H4 is considered relevant to the determination of this application.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is considered to comply with relevant Development Plan policies in that it would have no materially adverse effect on the visual amenities of the locality or the residential amenities of the adjoining properties, nor would it have an adverse impact upon the established character of the surrounding area.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

The site benefits from outline permission under reference AL/61/13/ with reserved matters having been approved under reference AL/102/17/RES. The application seeks to remove the Strategic Highways Infrastructure Contribution from the s106 agreement and vary the affordable housing mix.

STRATEGIC HIGHWAYS INFRASTRUCTURE CONTRIBUTION

This obligation was considered in the determination of appeal APP/C3810/A/14/2217385 by the Planning Inspector who under paragraph 128 of the appeal decision stated;

"...with the exception of the obligation in relation to the realignment of the A29 the infrastructure contributions sought by the Council are reasonable and necessary, and would comply with the tests within Regulation 122."

Therefore, in accordance with this determination it is considered that there is no legal basis on which the Council could seek to prevent the removal of this contribution from the s106 agreement.

It should also be highlighted that the s106 Agreement agreed in accordance with this development under paragraph 18.1 (Page 15) states;

"In the event that there is an express finding within the decision of the Planning Inspector that one or more of the obligations in this Agreement does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Levy Regulations (2010) (SI 2010/946) then (without prejudice to the remainder of this Agreement) the relevant individual obligation shall not take effect."

Therefore, irrespective of the applicants application to vary the s106 agreement the Strategic Highways Infrastructure Contribution could not be enforced.

AFFORDABLE HOUSING

The application seeks to vary the Affordable Housing contribution secured via the S106 agreement. The original s106 secured the provision of 80 units, comprising 60 dwelling units for senior living and 20 dwelling units. All 80 units were to be provided as a 50/50 split between affordable rent and intermediate housing (shared ownership).

The application for the variation of the s106 retains the provision of 80 units, with the 60 units for senior living to be provided on the original 50/50 split. But with the 20 dwelling units to now be provided as shared ownership only.

The proposed variation has been the subject of consultation with the Council's Housing Strategy and Enabling Manager, who has confirmed that the proposed variation to the tenure mix of the 20 dwelling units is acceptable.

SUMMARY

The proposed variation to the S106 agreement signed in relation to AL/61/13/ is considered acceptable in relation to the Strategic Highways Infrastructure Contribution for the reasons set out above.

In relation to affordable housing variation, the numbers of units proposed is unchanged and as such there will be 30% affordable housing contribution on site. The proposed variation of the tenure mix has been deemed acceptable and will not conflict with policy AH SP2 of the emerging Arun District Local Plan.

Therefore, it is recommended that the application to vary the s106 agreement signed under reference AL/61/13/ is approved.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE