

Recommendation Report for Removal of a Planning Obligation

REF NO: AL/22/19/PO

LOCATION: L'Apache
Westergate Street
Aldingbourne

PROPOSAL: Application to remove a planning obligation dated 16th January 1998 under planning reference No. AL/59/97 relating to planting & the use of the property

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
SITE AREA	0.34 hectares.
TOPOGRAPHY	Predominantly flat
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	Boundaries consist of 1.8 metre high close boarded fencing to the west and north and post and wire/two bar ranch fencing to the south and east.
SITE CHARACTERISTICS	The application site comprises a detached, pitched roof bungalow constructed of brick with concrete roof tiles with a conservatory at the southern end, which is set within a large plot and with several outbuildings and a static caravan. There is a small palm tree within the site and then a row of mature trees just beyond the northern boundary. There is an existing double garage and off-street space for the parking of up to 6 cars. The site is accessed by a private access road which is subject to a speed limit of 30 mph, and the private access road has a junction with the A29 Lidsey Road (Westergate Street) to the west.
CHARACTER OF LOCALITY	The site lies on the edge of the settlement of Westergate with open agricultural fields to the immediate east and a railway line to the south. The closest neighbouring property is Caigers Lodge to the west, which is a bungalow, with a large car port structure on the boundary towards the front and a large garage behind. The rear garden of Caigers Lodge also wraps around the northern boundary of the site and there is a barn building within this land.

RELEVANT SITE HISTORY

AL/103/18/PL	Erection of 2 No. dwellings & alterations to existing dwelling.	ApproveConditionally 07-02-19
--------------	---	----------------------------------

AL/59/97

Change of use of agricultural land to garden land to be used by adjoining property

App Cond with S106
16-01-98**REPRESENTATIONS****REPRESENTATIONS RECEIVED:**

Aldingbourne Parish Council

Aldingbourne Parish Council:

The Parish Council's planning committee met on Tuesday 9th April 2019 and decided, on balance, that they had no comments to make regarding this application.

COMMENTS ON REPRESENTATIONS RECEIVED:

The Parish Council's response is noted.

CONSULTATION RESPONSES RECEIVED:

None

POLICY CONTEXT

Designation applicable to site:

Located within the Built up Area Boundary (BUAB) in the Local Plan.

Located within the Barnham, Eastergate and Westergate (BEW) strategic allocation.

DEVELOPMENT PLAN POLICES

[Arun Local Plan 2011 - 2031:](#)

HSP1	HSP1 Housing allocation the housing requirement
HSP2	H SP2 Strategic Site Allocations
HSP2C	H SP2c Inland Arun
INFSP1	INF SP1 Infrastructure provision and implementation
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development
SDSP2	SD SP2 Built-up Area Boundary

[Aldingbourne Neighbourhood Plan 2016 POLICY H8](#)

Dwellings must have adequate private or shared amenity.

Outdoor space

Aldingbourne Neighbourhood Plan 2016 POLICY EH1

Resist development outside

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011-2031, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

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 and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan.

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; Ford.

Relevant Aldingbourne Neighbourhood Plan (NP) policies have been taken account of and are addressed in the Conclusions section of this report.

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 BUAB boundary has been revised and the proposal is considered to be acceptable in accordance with the newly adopted Local Plan as it is located within the Barnham, Eastergate and Westergate (BEW) strategic allocation.

The proposed development is located outside the built up area boundary (BUAB) of Westergate as drawn in the Neighbourhood Plan, but the new BUAB boundary in the adopted Local Plan prevails over the outdated NP.

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**SECTION 106 AGREEMENT (PLANNING OBLIGATION)**

A Section 106 Agreement (planning obligation) accompanied planning permission AL/59/97 which restricts the use of the land immediately east of the existing dwelling to open garden land ancillary to the residential use of L' Apache and not to plant any tree, shrub, bush, flower or other plant other than grass

and vegetables on the property without first obtaining the Council's written approval. The Section 106 Agreement effectively restricts residential development taking place on a small parcel of land within the BEW allocation.

PRINCIPLE OF RESIDENTIAL DEVELOPMENT

The granting of planning permission AL/103/18/PL in 2019 for the development of two semi-detached houses on the land that is subject to the S106 Agreement established it was acceptable for residential development on the site, due to the small number of houses which were being proposed and the scale of the development; and the fact that the application site is now within the BEW strategic allocation.

It was considered that the Section 106 Agreement, whilst material, did not lawfully prevent the LPA from issuing a decision on planning application AL/103/18/PL, granting planning permission; this would go with the land until such time as the Section 106 Agreement was discharged. The applicant was invited to submit a PO application following the granting of planning permission for the application (AL/103/18/PL) as following approval it was considered that the S106 Agreement no longer served a 'useful planning purpose'. The justification for this is that development of the site has been found to be acceptable as planning permission has been granted for its re-development comprising 2 new semi-detached houses and an extension to the existing dwelling at L'Apache.

For completeness, an informative was inserted in the Decision Notice for AL/103/18/PL highlighting that planning permission could not be lawfully implemented until the Section 106 Agreement is discharged.

DEED OF DISCHARGE

A Deed of Discharge has been submitted to the LPA under Section 106A of the Town and Country Planning Act, 1990, to discharge the Section 106 Agreement in respect of L'Apache, Westergate Street, Woodgate. The Section 106 Agreement would be discharged and cease to have effect from the date of the Deed of Discharge.

Summary:

It is considered that the granting of planning permission AL/103/18/PL for residential development on the land subject to the S106 Agreement; together with the BEW strategic allocation, means that the obligations of the Section 106 Agreement no longer serve a useful planning purpose and the Section 106 Agreement (planning obligation) imposed alongside planning permission AL/59/97 should be discharged.

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