

Recommendation Report for Planning Permission

REF NOS: AW/86/19/PO, AW/87/19/PO, AW/88/19/PO, AW/99/19/PO, AW/126/19/PO, AW/128/19/PO, AW/129/19/PO & AW/146/19/PO.

LOCATION: Numbers 2, 3, 4, 5, 6, 7, 8, 9 St Georges Gardens, Aldwick, PO21 5SN

PROPOSAL: Application to modify a planning obligation dated 23/05/2011 under planning application AW/295/10 relating to excluding individual owners of completed dwellings from liability.

DESCRIPTION OF APPLICATION

Eight applications have been received from the freeholder of St Georges Gardens all seeking to modify the Section 106 Legal Agreement (which was attached to the planning permission that gave consent for the new houses under ref AW/295/10) in order to exclude the owners of the dwellings from liability for the outstanding financial contributions.

SITE AREA

0.23 hectares.

RESIDENTIAL DEVELOPMENT DENSITY

N/A.

TOPOGRAPHY

Predominantly flat.

TREES

A Tree covered by a Tree Preservation Order is on the western boundary.

BOUNDARY TREATMENT

None to front. Rear boundaries enclosed by close boarded fencing.

SITE CHARACTERISTICS

Terrace of 10 houses of 1-2 storeys with an open plan character to the front.

CHARACTER OF LOCALITY

A mixture of bungalows in Queens Field East & houses in Queens Field West. Shopping precinct with flats above to the side of the site and a community hall to the rear.

RELEVANT SITE HISTORY

AW/139/14/PL	Application for the variation of Condition 2 following a grant of planning permission AW/295/10/ to show 6 No additional parking spaces.	AC 15/07/14
AW/123/14/PL	Application for the variation of Condition 2 (plans) following a grant of planning permission AW/295/10/.	AC 22/08/14
AW/340/13/	Application for the variation of condition 2 following a grant of planning permission AW/295/10/ to increase the number of bedrooms within each unit by 1.	R 12/03/14 Appeal Allowed 02/10/14
AW/198/13/NMA	Application for a non-material amendment following a grant of planning approval AW/295/10/ for amendments to the approved elevations	A 10/10/13
AW/295/10/	Demolition of existing church and erection of 10 No. New terraced houses with associated car parking and landscaping	R 09/03/11 Appeal Allowed 21/07/11

COMMENTS OF PLANNING HISTORY

The developers (Mildren Homes) had previously paid to the Council £39,467.60 for the Affordable Housing Contribution and £10,133.93 for the Public Open Space. These sums had included indexation and interest charges. For instance, the Public Open Space contribution stated in the original S.106 was £10,000.

However, Mildren Homes then went into administration in July 2017, owing Arun District Council (ADC) a further £81,459.77. They also owed West Sussex County Council (WSSC) £74,060 (not including indexation and interest charges) comprising of £30,503 for Primary Education, £32,829 for Secondary Education, £7,691 for Further Education, £2,735 for Library Services and £302 for Fire & Rescue.

On the 4th May 2019, ADC's Cabinet formally agreed that the outstanding debt to ADC of £81,459.77 be written off and that no further action be taken against the homeowners of the residential properties concerned and that the invoice is written off entirely.

WSSC have informally indicated that they would not pursue the individual freeholders but will not agree to deleting their contributions as it may be possible to pursue these from Mildren Homes in the future.

SUMMARY OF REPS RECEIVED

Aldwick Parish Council have commented on each of the respective applications to state, “no objection/support”.

OFFICERS COMMENTS ON REPS

Noted.

SUMMARY OF CONSULTATIONS RESPONSES

ADC HOUSING STRATEGY AND ENABLING MANAGER – No response received.

OFFICERS COMMENTS ON CONSULTATIONS

Noted.

POLICY CONTEXT

Designations applicable to site:

Within the Built-Up Area; and
Tree Preservation Order.

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.

There is no Neighbourhood Plan for Aldwick.

DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011-2031

AH SP2	Affordable Housing
INF SP1	Infrastructure Provision and Implementation

PLANNING POLICY GUIDANCE

SUPPLEMENTARY PLANNING GUIDANCE

XXX6

Interim Affordable Housing Policy Note

DEVELOPMENT PLAN 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 proposed cancellation of the affordable housing financial contribution is considered to comply with the current affordable housing development plan policies which only seek the provision of affordable housing on schemes of 11 or more. However, at the time that the application was made, the Councils "Interim Affordable Housing Policy" was in use and this stated that for developments of 1-14 units an affordable housing provision of 15% will be sought district wide. The proposal would remove the requirement for the outstanding affordable housing contribution to be paid and would therefore be in conflict with the previous development plan policy.

The proposed removal of freeholder liability in respect of the infrastructure contributions is considered to comply with the current infrastructure development plan policies which only seek the provision of infrastructure contributions on schemes of 11 or more. However, the policy in force at the time, policy GEN8 of the 2003 Arun District Local Plan, did not specify a minimum number of dwellings and any cancellation of these contributions would therefore be in conflict. Notwithstanding, the current proposal is to simply remove the freeholder liability for these contributions and so the original developers would still be liable. This would not be in conflict with the policy of the previous development plan.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background. These are set out below in the Conclusions section.

CONCLUSIONS

The applicants request that the planning obligation associated with ref AW/295/10 be modified so as to prevent there from being any future attempt from the Council to collect the outstanding financial contributions from the freeholders themselves.

On the 4th May 2019, Arun District Council made a formal resolution to write off the £81,459.77 debt and also formally confirmed that no action would be taken against the homeowners of the residential properties concerned.

The modification of the planning obligation in respect of the affordable housing contribution is in conflict with the policies of the development plan that was in force at the time but is not in conflict with the policies of the current development plan. Notwithstanding, the decision of Arun District Council has been made and this outweighs any policy conflict and enables the modification of the planning obligation to delete the outstanding financial contributions. The Deed of Variation (DoV) will therefore be amended to refer only to the financial contributions in respect of affordable housing and public open space that have already been paid. This ensures that the Council is not liable to repay the sums that have already been paid to the developer.

West Sussex County Council will not agree to the deletion of their infrastructure contributions from the original agreement but will agree to a provision that prevents the County Council from taking any action against the individual freeholders to reclaim the outstanding monies. This ensures that WSCC are free to pursue Mildren Homes if they wish. On this basis, this modification would not be in conflict with the policy of the development plan that was in force at the time.

It is therefore recommended that the planning obligation as attached to AW/295/10 be modified to:

- (a) Change the sum due for affordable housing from £108,320 to £39,467.60 (the latter amount being that which has already been paid and which included additional indexation and interest payments);
- (b) Change the sum due for public open space from £10,000 to £10,133.93 (to reflect what has already been paid and which included additional indexation and interest payments); and
- (c) Specify that West Sussex County Council will not seek to reclaim the outstanding financial contributions for primary education, secondary education, further education, library services and fire & rescue from the individual freeholders.

It should be noted that the revised planning obligation will apply to all 10 freeholders even though only 8 of the freeholders have made applications to the Council.

HUMAN RIGHTS

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.

EQUALITIES

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