

Recommendation Report for Removal of a Planning Obligation

REF NO: AW/314/17/PO

LOCATION: Zacleigh
Kings Parade
Bognor Regis

PROPOSAL: Application to discharge planning obligations dated 03/09/2017 granted under AW/179/14/PL relating to Affordable Housing Provision in the S106 agreement.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above
SITE AREA	400m2.
TOPOGRAPHY	Predominantly flat
TREES	None affected by the proposed development.
BOUNDARY TREATMENT	Low brick wall to front. Low 1m high close boarded fencing to western boundary. 1.8-2m close boarded fencing to eastern and northern (rear) boundaries.
SITE CHARACTERISTICS	The application site comprises a detached, flat roofed 3 storey building comprising of three flats. Front garden. Rear parking area (3 spaces) plus landscaped area to rear and a bin store. The building is white rendered with a grey pvc membrane roof.
CHARACTER OF LOCALITY	The area is part of a residential street comprising a mixed character with detached properties of 1, 2 and 3 storeys set in small and medium plots set back from the highway with gardens to front, side and rear within a suburban environment. To the south there is a large rectangular park. To the rear (north), there is a 3 storey flatted building which was built very close to the shared boundary. The affected elevation contains both bedroom & lounge windows and there are Juliette balconies to the lounge windows.

RELEVANT SITE HISTORY

AW/73/17/DOC	Application for approval of matters reserved by condition imposed under AW/179/14/PL relating to condition 4 for landscape scheme & 5 for surface water drainage details.	DOC Approved 17-05-17
AW/179/14/PL	Refurbishment and conversion of existing two storey building, containing 2 No 3 bed refurbished flats and 1	ApproveConditionally 09-09-14

No 3 bed new flat, by the addition of an additional storey
with revised elevations under a flat roof (resubmission
following AW/71/14/)

Application AW/179/14/PL was approved in conjunction with a Section 106 legal agreement relating to an affordable housing contribution of £8,154.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

No responses.

COMMENTS ON REPRESENTATIONS RECEIVED:

N/A.

CONSULTATIONS

Planning Solicitor

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:

ADC HOUSING STRATEGY & ENABLING MANAGER - "No objection"

ADC LEGAL SOLICITOR - No objections for the following reasons:

- (1) The s106 deed is dated 3 September 2014. The papers show it was for a development of 2 flats - certainly for less than 10 dwellings;
- (2) The Written Ministerial Statement "WMS" which prohibited affordable housing contributions for sites of less than 10 dwellings was dated 28 November 2014. So when the deed was dated the levying of affordable housing contributions on sites of less than 10 dwellings was lawful and policy compliant - because the WMS wasn't in force;
- (3) You will recall the history of the challenge to the WMS by West Berks and Reading Councils which eventually resulted in the WMS being declared lawful on 8 May 2016;
- (4) The s.106 deed may be contractually enforceable - but as a matter of policy and discretion, the DCLG advises Councils not to seek money in these circumstances - sites of 10 or fewer dwellings - so for policy reasons the Council can release and discharge the s106 deed; and
- (5) In any event, the applicant just has to re-apply for the same planning permission for the same development to get a planning permission freed from the s.106 deed - so it may as well be dealt with pragmatically now - in the way advocated above.

The solicitor concludes by saying that: "In short - for the above reasons I recommend you decide to grant the application to discharge the sa106 deed"

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designations applicable to site:

Within Built Up Area Boundary; and
No Public Sewer.

DEVELOPMENT PLAN POLICES

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

DEV17 Affordable Housing

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

AH SP2 Affordable Housing

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

NPPG National Planning Practice Guidance

SUPPLEMENTARY POLICY GUIDANCE:

XXX6 Interim Affordable Housing Policy

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 then subject to public consultation. The hearing sessions into the examination of the Arun Local Plan ended on Thursday 28 September 2017 and the Inspector then wrote to the Council to set out his 'Interim Views following the Hearings'. The plan was then modified further in January 2018 (Modified - Arun Local Plan - January 2018 Consultation) and these were subject to public consultation between 12 January 2018 and 23 February 2018.

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).

There is no Neighbourhood Development Plan for Aldwick.

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

Application AW/179/14/PL was approved in conjunction with a section 106 legal agreement relating to an affordable housing contribution of £8,154. This decision was taken in accordance with the Councils then affordable housing policy but prior to the Governments Written Ministerial Statement (WMS) of 28 November 2014 which prohibited financial contributions for affordable housing and tariff style planning obligations developments of 10 units or less. This was supported by an amendment in December 2014 to the national Planning Practice Guidance.

The WMS was subject to various legal challenges in the Courts and this process eventually resulted in the WMS being declared lawful on 8 May 2016. Since that time, the Council has not been requiring affordable housing contributions for sites of less than 10 dwellings. Indeed, policy AH SP2 of the emerging Local Plan reflects this position and states that:

"For all developments of 11 residential units or more the Council will require a minimum 30% of the total number of units proposed on site to be provided as affordable housing on the same site in the first instance."

Therefore, although the existing s.106 deed is contractually enforceable, the affordable housing payment would not comply with current policy. It is also considered that regard should be had to the fact that the applicant could simply re-apply for the same development to get a planning permission freed from a s.106 deed concerning affordable housing.

In these circumstances, it is considered that this decision should be approved and the legal deed 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