



RODWAY PLANNING
CONSULTANCY LIMITED

PLANNING SUPPORT STATEMENT

In relation to:

***‘Modification of Section 106 Agreement
(pursuant to planning permission
A/142/16/OUT for 18 new dwellings), to vary
the type and mix of permitted affordable
housing (5 no. units)’***

**Former Merry England Nursery, Dappers Lane,
Angmering BN16 4EN**

January 2020

PLANNING STATEMENT

**Merry England Nursery Development Site, Dappers Lane, Angmering,
West Sussex, BN16 4EN**

I. INTRODUCTION

- 1.1 On behalf of the applicants, **Bilton Fields Homes Limited**. This application proposes to vary the existing Section 106 Agreement that relates to the approved development of 18 homes on land at Merry England Nursery, on Dappers Lane in Angmering.
- 1.2 This Planning Statement is submitted in support of the above application. The statement describes the site, its surroundings and the proposal itself. The Planning Policy background is considered along with an assessment of the proposed modifications to the s106 agreement in light of the relevant policies and all other material planning considerations, including discussions with Officers of the Local Authority.
- 1.3 This statement should be read in conjunction with the submitted *draft Deed of Variation*, which has been prepared by the Applicant's Solicitor, whose contact details are set out below:
- Moore Blatch**
Gateway House, Tollgate, Chandler's Ford, Eastleigh, Hampshire, SO53 3TG
[REDACTED]
- 1.4 The applicant has also received detailed advice on this issue from specialist consultants, Bespoke Property Consultants.



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2. SITE CONTEXT

- 2.1 The site comprises a former nursery measuring some 1.13 hectares. The site is positioned on the east side of Dappers Lane to the north of Angmering village.
- 2.2 The site has been cleared ready for development to commence.
- 2.3 When Outline permission was originally approved for this site in June 2017, it was situated outside of the built-up area and occupied by a detached two storey brick dwelling with a tiled roof. To the west of the dwelling is a barn and stables with the house and stables surrounded by equestrian paddocks.
- 2.4 Following the adoption of the Arun Local Plan in 2018, the site is now located within the built-up area boundary, with a large scale 800 unit residential allocation located to the rear (east) – policy SD9 refers.
- 2.5 The site is located in a semi-rural locale, with limited residential development to the east of Dappers Lane. To the north and south of the site are former nurseries used largely for commercial purposes with open fields to the east of the site. To the west of Dappers Lane is residential development within the built up area boundary.
- 2.6 There have been a number of residential developments approved in recent years within the surrounding area.

3. PLANNING HISTORY

- 3.1 According to the Council's online records, the application site has the following relevant planning history (listed in chronological order, with most recent last):

A/142/16/OUT - Outline application with some matters reserved for the demolition of existing buildings & erection of 18 No. dwellings and the provision of pedestrian footpath adjacent to Dappers Lane. This application is a Departure from the Development Plan. Approved subject to conditions and a S106 agreement, 30th June 2017.

A/91/18/PL - Application for variation of condition following grant of planning permission A/142/16/OUT - Condition 3 - Amend approved access plan & Variation to condition 10 - No houses shall be occupied until the vehicular access and footway serving the development has been constructed in accordance with the approved drawing including all other details of construction. Approved conditionally, 26th October 2018.

A/168/18/RES - Application for approval of reserved matters following outline planning permission A/142/16/OUT for the demolition of existing buildings & erection of 17 no. dwellings, refurbishment of 1 no 3bed dwelling & the provision of pedestrian footpath adjacent to Dappers Lane. Approved conditionally, 18th April 2019.

A/124/19/RES - Application for approval of reserved matters following outline permission A/142/16/OUT & reserved matter application A/168/18/RES relating to appearance of dwelling houses. Approved conditionally, 6th December 2019.

A/132/19/DOC - Approval of details reserved by condition imposed under ref A/91/18/PL relating to Condition Nos 4 - surface water drainage, 6 - flows to watercourses, 7 - SuDs system, maintenance of any watercourse, 11 - Construction Management Plan, 12 - road safety audit, 14 - ecological, 17 - tree protection and 21 contamination. Currently undecided.

A/135/19/T – Fell 5 no. Hornbeam trees. Application withdrawn, 20th November 2019.

A/160/19/NMA – Non-material amendment following the grant of reference A/168/18/RES for the tree locations. Approved 13th November 2019.

4. THE PROPOSAL

- 4.1 This application seeks to modify the existing Section 106 legal agreement dated 27th June 2017, which applies to planning permission A/142/16/OUT.
- 4.2 The applicant wishes to vary the wording of the legal agreement to allow greater flexibility in terms of the mix of tenures for the permitted affordable housing.
- 4.3 Following consultation with the Council’s Housing Officer, it is agreed that the mix of housing is also to be modified from that which appears in the current version of the s106 agreement. This is because the mix of units in the legal agreement does not accord with the approved layout for the development.
- 4.4 We propose that the s106 needs amending to read as follows:
*“2 x 2bh and 1 x 3bh for Affordable Rented Housing and
1 x 2bh and 1 x 3bh for Intermediate Housing (the agreement currently reads 2 x 2bh for Intermediate Housing)
Or such other mix of tenures of Affordable Housing Units that may be agreed with ADC prior to Commencement of Development”* (the underlined parts are the additional/varied text).
- 4.5 The existing legal agreement is also vague in parts and there are errors in the text, which are also proposed to be amended. The relevant sections are:
- Schedule 4, clause 2.1c



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- Schedule 4, clause 5.1.3
- Schedule 4, clause 6.6.2

5. PLANNING POLICY CONTEXT

(i) National Planning Policy Framework, 2019 (NPPF)

5.1 At paragraph 56 this document states:

“Planning obligations must only be sought where they meet all of the following tests:

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.”

These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations). These tests apply whether or not there is a levy charging schedule for the area.

(ii) National Planning Policy Guidance (NPPG)

5.2 Relevant paragraphs are detailed below in the following section of this statement.

(iii) The Arun Local Plan 2011 – 2031

5.3 The Arun Local Plan 2011 – 2031 was adopted by resolution of Full Council on 18th July 2018. It comprises a written statement and supporting policy maps 1-4. The plan sets out a spatial vision, objectives and a sustainable strategy for delivering the needed growth of the District over the period 2011 – 2031. This plan replaces the Arun Local Plan 2003 and the saved policies within it and now provides the most up-to-date policy guidance for the District.

5.4 Policy AH SP2: Affordable housing

“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.

Where it can be proven, however, that 30% affordable housing provision is not



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viable, then a reduction in the amount of affordable housing on a site or off-site provision as part of another development within Arun District may be considered (as agreed with the local planning authority). The provision of affordable housing on a site at less than 30%, or on an alternative site or by way of a commuted sum will only normally be allowed in very exceptional circumstances if supported by robust evidence including, where appropriate, viability evidence.

The Council will negotiate the affordable housing tenure mix on development sites from an initial position of 75% rent and 25% intermediate housing.

Affordable housing must be visually indistinguishable from market housing with large groupings of single tenure dwellings or property types avoided. Affordable housing units shall be permitted in small clusters throughout development schemes. The affordable dwelling mix should comprise of the following range of homes unless evidence indicates otherwise.

- o 1 bedroom 35 – 40%*
- o 2 bedroom 35 – 40%*
- o 3 bedroom 15 – 20%*
- o 4+ bedroom 5 – 10%*

Provision of affordable housing can be by either an Arun preferred Register Partner, an Affordable Housing Provider or the Council. All providers will be required to sign and adhere to the principles of the Council's Developer and Partner Charter Plus. Affordable housing will be made available for households on the Council's housing register or on the Homebuy Zone Agent's register, with nominations made by the Council from those registers.

All planning applications that include residential development, either in whole or in part, must include an Affordable Housing Statement."

5.5 Policy INF SP1: Infrastructure provision and implementation

"The Local Planning Authority will support development proposals which provide or contribute towards the infrastructure and services needed to support development (including the necessary infrastructure set out in the Infrastructure Delivery Plan)

to meet the needs of occupiers and users of the development and the existing community.

Infrastructure provision and contribution towards services should be delivered using the following approach:

- Testing the capacity of existing infrastructure and where there is insufficient infrastructure capacity to support new development, mitigate the impacts of the development, provision should be secured and must be operational no later than the completion of the development or phase of development for which it is needed;*
- Infrastructure provision or improvements should be provided on-site as an integral part of a development, wherever possible and appropriate;*
- Off-site measures will require planning obligations or financial contributions, to secure the necessary provision;*
- Where a contribution towards other district wide infrastructure improvements or provision is needed and viable this will be achieved through the Community Infrastructure Levy Charging Schedule and Regulation 123 Infrastructure List which will be introduced as soon as possible after the adoption of this Local Plan. Until such time as a Charging Schedule is adopted contributions will be achieved through planning obligations (where they meet the statutory tests).*

Any on-site provision or financial contribution required to address unacceptable impacts must meet the statutory tests for planning obligations required by Regulation 122 of the Community Infrastructure Regulations 2010.

The Local Planning Authority will support proposals by service providers for the delivery of utility infrastructure and the improvement or development of locally and regionally important infrastructure where needed to serve existing or new development required through this Plan, or to secure long term supply, subject to other relevant policies."

(iii) Angmering Neighbourhood Development Plan 2014 - 2029



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- 5.6 The Neighbourhood Plan was made in March 2015. It is understood that a review of the Plan is to be soon commenced by the Parish Council.
- 5.7 In lieu of this, only Policy HD3 is considered to be of any limited relevance to this application to vary an existing legal agreement. This states that “Proposals for more than six dwellings should demonstrate how the applicant has sought to meet local needs. Proposals should provide for a mix of housing sizes and the delivery of more smaller and fewer larger dwellings is encouraged...” Elsewhere in the Plan there are references to a shortage of affordable housing in the village for local people as *“result of high house prices driven up by demand from an influx of commuters, coupled with restricted scope for new house building in the Plan area.”* It is understood that the housing needs survey that formed part of the evidence base for the Plan identified a need for small, affordable housing, and it is noted that at Policy HA2 (allocation for at least 16 units on the Parish Council’s own land at Mayflower Way) there is a specific requirement for 2 and 3 bed affordable homes.

6. PLANNING ASSESSMENT

- 6.1 The NPPG confirm that planning obligations are legal obligations entered into to mitigate the impacts of a development proposal. This can be via a planning agreement entered into under section 106 of the Town and Country Planning Act 1990 by a person with an interest in the land and the local planning authority; or via a unilateral undertaking entered into by a person with an interest in the land without the local planning authority. Planning obligations run with the land, are legally binding and enforceable. A unilateral undertaking cannot bind the local planning authority because they are not party to it. (Paragraph: 001 Reference ID: 23b-001-20190315).
- 6.2 The NPPG says that *“Planning obligations can be renegotiated at any point, where the local planning authority and developer wish to do so. Where there is no agreement to voluntarily renegotiate, and the planning obligation predates April*

2010 or is over 5 years old, an application may be made to the local planning authority to change the obligation where it “no longer serves a useful purpose” or would continue to serve a useful purpose in a modified way (see section 106A of the Town and Country Planning Act 1990).” (Paragraph: 020 Reference ID: 23b-020-20190315).

6.3 Section 106A of the Town and Country Planning Act provides that:

“(1) A planning obligation may not be modified or discharged except—

(a) by agreement between the authority by whom the obligation is enforceable the appropriate authority and the person or persons against whom the obligation is enforceable.

And:

(6) Where an application is made to an authority under subsection (3), the authority may determine—

*(a) that the planning obligation shall continue to have effect without modification;
(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.”*

6.4 The NPPG, at Paragraph: 013 Reference ID: 23b-013-20190315, confirms that *“Discussions about planning obligations should take place as early as possible in the planning process.”* To that end the Applicant commissioned the Bespoke Property Group (BPG) to engage with the Council’s Housing Officer (Arjan de Jong) in order to discuss the content of the signed S106 agreement and the revisions that are required.

6.5 Having reviewed the original s106 agreement that relates to the approved housing development at Merry England, BPG identified several issues in the drafting of the legal agreement which make the operation of the agreement uncertain and may

cause problems with funding the Affordable Housing. BPG have identified the following specific issues which are addressed by the Deed of Variation being put forward by the developer that now owns the site:

- 1) Schedule 4, clause 2.1c, the reference to the price being “no more than 45% of market value at the time of offer” is vague in that it does not refer directly to land value or the value of the finished units. Bearing in mind the preceding two sub-clauses talk about “Affordable Housing Land” it is our view that the clause should be interpreted to be relevant to the “Affordable Housing Land” value.
- 2) There is an error in the drafting of Schedule 4, Clause 5.1.3 as the effect of this clause is to make the covenants in the schedule non-binding on a mortgagee in possession (MiP) of the AH units, however it is not subject to the terms of Clause 6 relating to the process for sale of AH units by a mortgagee. This would leave a mortgagee free from the terms of Clause 6 which leaves the Council at a disadvantage and would not be what was intended.
- 3) Assuming the point at 2 above is corrected and Clause 6 is active, Schedule 4, Clause 6.6.2 (MiP Clause) refers to the mortgagee agreeing a price which reflects open market value of the AH units subject to the leases subsisting at the date of the Sale Notice. This has the problem that the MiP is not protected in terms of recovering all of the debt including fees and charges. More modern S.106 agreements would have the latter covered as that is the wording that AH funders prefer and which is in the precedents used by most LPAs. Thus, as currently drafted the AH units may be un-mortgageable.
- 4) The mix of units in the S.106 does not accord with the layout approved in the planning consent. In essence the layout has 1 extra 3 Bed unit, and 1 less 2 bed unit as Affordable Housing than the S.106 agreement. This is to the Council’s benefit and the developer is willing to continue to develop the scheme in accordance with the approved layout and not the S.106 agreement.



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- 6.6 Pursuant to Para 4 above, the definition of Affordable Housing to be provided in the existing S106 agreement is currently:

"Affordable Housing Units means five (5) of the Dwelling Units to be provided as Affordable Housing with tenure as follows :-

2 x 2bh and 1x3bh for Affordable Rented Housing and
the 2 x 2bh for Intermediate Housing

or such other mix of Affordable Housing Units that may be agreed with ADC prior to Commencement of Development

- 6.7 We propose that this now modified to read as:

*"2 x 2bh and 1 x 3bh for Affordable Rented Housing and
1 x 2bh and 1 x 3bh for Intermediate Housing*

Or such other mix of tenures of Affordable Housing Units that may be agreed with ADC prior to Commencement of Development"

It is agreed that the tenure may only be amended by further agreement with Arun District Council, in order to ensure the mix of units is delivered as per the agreed layout under the planning consent.

- 6.8 Evidently these revisions are of a minor nature, and do not affect materially the beneficial provisions of the legal agreement. It will still deliver 5 no. affordable housing, comprising 3 no. affordable rented units and 2 no. intermediate housing units. Simply, the modifications applied for are to correct existing errors and uncertainties in the drafting of the original S106 agreement, and also to provide a degree of flexibility in moving forward (in terms of the tenure of the units, but still subject to local authority approval).
- 6.9 Given that the proposed modifications are clearly required for coherent and logical reasons, and that there is no resultant conflict with either national or local policy, we suggest that approval should be forthcoming.



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7 CONCLUSIONS

- 7.1 Given the above, we respectfully suggest that the deed of variation be approved promptly, in order to provide the applicant with certainty in delivering this exciting development in a timely manner.

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