

Recommendation Report for Removal of a Planning Obligation

REF NO: A/13/20/PO

LOCATION: Merry England Nursery
Dappers Lane
Angmering
BN16 4EN

PROPOSAL: Modification of Planing Obligation dated 27/06/2017 (Section 106 Agreement pursuant to A/142/16/OUT for 18 new dwellings) to vary the type & mix of permitted affordable housing (5 No. units).

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Application to modify the planning obligation A/142/16/OUT to: - vary the make up of house types of affordable housing and to allow greater flexibility in terms of the mix of tenures for the permitted affordable housing. - amend errors in text and vagueness of wording in parts of Schedule 4, clause 2.1c : Schedule 4, clause 5.1.3.: Schedule 4 clause 6.6.2 .
SITE AREA	1.13 hectares
TOPOGRAPHY	Predominantly flat
BOUNDARY TREATMENT	Predominantly picket fencing, trees and hedging
SITE CHARACTERISTICS	The site is situated outside of the built up area and occupied by a detached two storey brick dwelling with a tiled roof. To the east of the dwelling was a barn and stables with the north-east corner of the site given over to paddocks. The southern portion was mowed grass. The site is now under construction.
CHARACTER OF LOCALITY	Rural 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.

REPRESENTATIONS

No comments received

COMMENTS ON REPRESENTATIONS RECEIVED:

Noted.

CONSULTATIONS

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:

HOUSING STRATEGY AND ENABLING MANAGER:

Confirmed that the proposed amendment is acceptable.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted

POLICY CONTEXT

Designation applicable to site:

ADOPTED LOC PLN

OUTS BUILT AREA

DEVELOPMENT PLAN POLICIES

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

AHSP2 AH SP2 Affordable Housing

INFSP1 INF SP1 Infrastructure provision and implementation

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.

No policies within the neighbourhood plan are considered relevant to this application.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

PLANNING

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 not effect the provision of affordable housing or other infrastructure required through the S106 agreement.

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

PRINCIPLE:

The proposal is to modify the s106 agreement as follows;

- The definition of Affordable Housing units should be replaced with
"Affordable Housing Units" means five (5) of the Dwelling Units to be provided as Affordable Housing with tenure as follows:
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 tenure mix of Affordable Housing Units as may be agreed with ADC (acting reasonably) prior to Commencement of Development".

This is to reflect the actual development on site and to allow flexibility in terms of the tenure mix of affordable housing

- At Schedule 4, 2.1c to replace the sub paragraph with the following:
"2.1 (c) A price reflecting no more than 45% of the market value of the Affordable Housing Land at the time of the offer".

This is to remove the vague reference to value of the properties referred to in the original s106

- To remove para 5.1.3 from the document

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.

- Delete paragraph 6 to Schedule 4 and replace with:
" The provisions contained in this Schedule 4 shall not be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver) of the whole or any part of the Affordable Housing Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:
- such mortgagee or chargee or Receiver shall first give written notice to ADC of its intention to dispose of the Affordable Housing Units and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Units to another registered provider or to ADC for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Units free from the provisions contained in this Schedule 4 which provisions shall determine absolutely"

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 had 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 hence the need for the change.

The above changes would have no impact on the delivery of affordable housing or the other infrastructure secured through the original S106 Agreement, and would therefore comply with Policies INF SP1 and AH SP2 of the Arun Local Plan.

The proposed modification to the S106 Agreement is therefore acceptable.

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