

Recommendation Report for Removal of a Planning Obligation

REF NO: A/187/17/PO

LOCATION: Land between New Place Bungalow & Arundel Road
Angmering
BN16 4ET

PROPOSAL: Application to remove a planning obligation dated 21.12.2016 under planning reference No. A/131/16/OUT relating to Affordable Housing Provisions in the Section 106 agreement.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	The application seeks to remove the affordable housing obligation included in the Section 106 agreement dated 21.12.2016 under planning reference A/131/16/OUT. The Section 106 agreement secured the provision of 3 no. affordable housing units.
SITE AREA	Approximately 0.7 hectares.
RESIDENTIAL DEVELOPMENT DENSITY (NET)	Approximately 12.85 dwellings per hectare.
TOPOGRAPHY	Predominantly flat
TREES	None of any significance affected by the proposed development.
BOUNDARY TREATMENT	The boundaries of the site consist of mature planting and trees of various heights and species.
SITE CHARACTERISTICS	The site is currently vacant overgrown land with limited areas of hard-standing.
CHARACTER OF LOCALITY	The character of the locality is rural with the site being situated outside of the built area boundary.

RELEVANT SITE HISTORY

Outline planning permission was granted under reference A/131/16/OUT for the construction of a total of 9 no. dwellings at the site with 3 of these units being affordable dwellings. The affordable housing contribution was voluntary and was secured via S106 agreement.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Angmering Parish Council

Objection 15.11.2017 -

Considered at the Housing, Transport and Planning Committee meeting held on 31/10/2017. Objection

on the grounds that the provision of affordable housing, whilst acknowledged to be voluntary on the part of the applicant, had been presented as an enhancement to the sustainability of the scheme, and the Development Control Committee had voted in favour of it accordingly. To seek to remove that obligation after the event is therefore inappropriate.

1 No. letter of representation received from Save Angmering Village;

From our understanding of Arun's affordable housing policy it is a requirement that "developments of 1 to 14 units an affordable housing provision of 15% be sought district wide, subject to further research to ensure this is financially viable".

As yet there appears to be no justification from the developer, financial or otherwise, for this obligation to be removed despite having signed an S106 agreement with the Council.

On what grounds will the Council agree to this request if granted?

COMMENTS ON REPRESENTATIONS RECEIVED:

In response to the objection from Angmering Parish Council;

In considering the affordable housing contribution the officers recommendation report for A/131/16/OUT stated;

"The proposed development makes the provision of 3 No. affordable units which exceeds the requirements of Emerging Plan Policy SP9. However, it must be considered that there is no legal requirement to provide affordable housing on developments of 10 units or less - therefore, the proposed affordable housing provision if delivered is considered to further enhance the sustainability (social) of the scheme in accordance with Paragraph 7 of the National Planning Policy Framework."

The consideration of the affordable housing contribution is considered to have made it clear to members that the affordable housing contribution was voluntary. The report stated that if the affordable housing was provided it would constitute a further enhancement to the sustainability of the scheme. However, at no point in the report is it stated that the affordable housing makes the site sustainable in accordance with paragraph 7 of the NPPF.

In the assessment of the proposals compliance with paragraph 7 of the NPPF consideration was given to the location of the site was sustainable and that the proposal would also;

- 1) increase Council Tax receipts;
- 2) provide for jobs during the construction stage;
- 3) support the local community by providing housing to meet future needs; and
- 4) as demonstrated elsewhere in this report, not have an adverse effect on protected wildlife species

This application for the variation of the planning obligation was presented to members at Briefing Panel to make them aware of it. No requests were made for this application to be presented at Development Control Committee for determination.

Therefore, it is considered that the removal of the voluntary affordable housing contribution does not result in the site being considered unsustainable in conflict with Paragraph 7 of the NPPF. Nor does its removal conflict with the officer's recommendation report or the determination of the Development Control Committee.

The following response by the case officer was provided on the 11th December 2017 in response to the letter of representation submitted by Save Angmering Village;

We have advised that an application for a variation of the planning obligation is required and this application has been made. The Council as yet have not determined the application for the variation of the s106 agreement.

Arun's affordable housing policy is now somewhat out of date following the order of the Court of Appeal dated 13th May 2016, which gave effect to the policy set out in the written ministerial statement of the 28th November 2014. Paragraph 031 ref ID: 23b-031-20161116 of the National Planning Policy Framework states that;

"contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)"

It should be highlighted that a lower threshold of 5-units or less can be applied in rural areas as described under Section 157(1) of the Housing Act 1985 which include National Parks and Areas of Outstanding Natural Beauty. The site in this case would not be classified as rural in accordance with Section 157(1) of the Housing Act 1985. It should also be noted that these contributions (from developments of 6 and 10-units) should be in the form of cash payments.

Given that national policy has superseded the Council's Affordable Housing Strategy we have no legal basis on which to require the provision of affordable housing contributions from developments of 10-units or less. During the determination of this application the applicant was made aware that there was no legal requirement to provide affordable housing and the report presented to Development Control Committee included the following comment;

"The proposed development makes the provision of 3 No. affordable units which exceeds the requirements of Emerging Plan Policy SP9. However, it must be considered that there is no legal requirement to provide affordable housing on developments of 10 units or less - therefore, the proposed affordable housing provision if delivered is considered to further enhance the sustainability (social) of the scheme in accordance with Paragraph 7 of the National Planning Policy Framework."

Therefore, in this case there is no need for the developer to justify the loss of the affordable units as the LPA have no basis on which to require their provision.

CONSULTATIONS

Planning Solicitor

CONSULTATION RESPONSES RECEIVED:

Planning Solicitor:

The application can be granted-

- You advise that the developer provided affordable housing where it wouldn't normally be required. So there is no policy justification for affordable housing on this site.
- The S106 deed of variation has already been authorised and progressed to discharge the obligation i.e. to provide affordable housing on a site where it wouldn't normally be required.
- The process/sequence got somewhat muddled with the s106 deed DOV started before the PO application had been submitted/decided.

- The DOV can be completed once the PO application has been decided.

COMMENTS ON CONSULTATION RESPONSES:

Comments are noted.

POLICY CONTEXT

Designation applicable to site:
Outside built up area boundary

DEVELOPMENT PLAN POLICES

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

DEV17 Affordable Housing

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

H SP2 Affordable Housing

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance

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 consultation on these has taking place. The Main Modifications should be read alongside the Arun District Local Plan 2011-2031 (Publication Version) October 2014 and where there are changes the Main Modification. The examination was completed in September 2017.

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).

The Angmering Neighbourhood Plan makes reference to affordable housing contributions under paragraph 6.4. However, there are considered to be no relevant policies to this application.

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 relating to the provision of affordable housing.

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

The site benefits from outline planning approval for the erection of 9 dwellings and included a voluntary contribution of 3 no. affordable units. This application seeks to remove the voluntary affordable housing contribution provided under reference A/131/16/OUT.

In line with the order of the Court of Appeal dated 13th May 2016, which gave effect to the policy set out in the written ministerial statement of the 28th November 2014, Paragraph 031 (ref ID: 23b-031-20161116) of the National Planning Policy Framework states that;

"contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1,000 square metres (gross internal area)"

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, in light of this there is no legislative/policy basis by which the Local Planning Authority can require the provision of affordable units on site.

The original officers recommendation report on application A/131/16/OUT made clear that;

"...it must be considered that there is no legal requirement to provide affordable housing on developments of 10 units or less ..."

The consideration of the affordable housing contribution went on to state that;

"...the proposed affordable housing provision if delivered is considered to further enhance the sustainability (social) of the scheme in accordance with Paragraph 7 of the National Planning Policy Framework."

The officers recommendation report for A/131/16/OUT did not identify the provision of the voluntary affordable housing contribution as being essential to the schemes sustainability (in accordance with Paragraph 7). The report identified the affordable housing contribution as a 'further enhancement' not an essential element which made the scheme acceptable on balance.

Part 4 of the Council's 'Officer scheme of delegation' states under section 3.1.2 that where the following exceptions apply, the application or matter will be determined by the Development Control Committee;

- i) Any Major or Minor application for planning permission which prior to its determination is subject to a written representation from a Parish Council, Town Council or formal Parish Meeting, which has been received within the consultation period and which is in conflict with the recommendation of Officers
- ii) Any application submitted by or on behalf of the Council
- iii) Any Major or Minor application as defined by the Department of Communities and Local Government which would create a new access or egress via the A27, A29, A284 and A259 roads.
- iv) Any householder application where the ward member has submitted a written request to the Chairman and/or Vice Chairman of the Development Control Committee before the end of the statutory consultation period shall be referred to the Development Control Committee where it is on sound planning grounds."

The application in this case does not fall under i, ii, iii or iv above and as such this application can be determined under delegated authority. The application was presented to members at briefing panel and it was determined that the scheme of delegation would be followed in this case.

Therefore, in light of the above it is recommended that the proposed removal of the affordable housing obligation is approved under delegated authority.

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