

Recommendation Report for Removal of a Planning Obligation

REF NO: BE/36/19/PO

LOCATION: Mulberry Fields
New Barn Lane
North Bersted
PO21 5DB

PROPOSAL: Application to modify a planning obligation dated 24th February 2016 under BE/142/15/OUT relating to Clause 3.3 to ensure the Registered Provider will not be bound by the obligation other than the affordable housing provision & Part 1 Schedule 4 in the Section 106 agreement.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Application to modify the planning obligation (BE/142/15/OUT) to: - ensure that the registered provider of affordable housing will not be bound by the obligations other than the affordable housing provisions, - amend to ensure that mortgage provisions meet lenders standards - to ensure that any future purchasers of the affordable units will not be bound by the affordable housing obligation.
SITE AREA	3.72ha
RESIDENTIAL DEVELOPMENT DENSITY (NET)	N/A
TOPOGRAPHY	Predominantly flat
TREES	There are trees and hedging along the four site boundaries.
BOUNDARY TREATMENT	The site has a post and wire fence around the rectangular enclosed field. The red line application site includes hedgerows and trees around the site.
SITE CHARACTERISTICS	The site was an open field to the West of Bersted but is now a construction site with some occupied properties as permissions BE/142/15/OUT (as amended by BE/18/17/PL) and BE/113/17/RES are being implemented.
CHARACTER OF LOCALITY	The surrounding undeveloped land to the west is flat with fields separated by hedgerows, some boundary trees and drainage ditches. The nearby housing in Bersted to the west of Chichester Road is suburban in character, mainly 1950s and 60s single and two storey houses, often with open plan front gardens and low planting. The properties fronting the site on New Barn Lane are single storey. To the north west beyond the trees and hedgerows is Orchard Caravan Park which forms a finger of development into the

countryside with numerous mobile homes. The West Bersted strategic housing allocation also lies to the north west of the site.

RELEVANT SITE HISTORY

BE/18/17/PL	Variation of condition 3 for approved plans & 23 for vehicular access imposed under BE/142/15/OUT. This application is a Departure from the Development Plan.	App Cond with S106 05-05-17
BE/142/15/OUT	Outline application with some matters reserved for a mix of up to 90 No. residential units, associated open space, landscaping, access & car parking. This application is a Departure from the Development Plan.	App Cond with S106 24-02-16
BE/113/17/RES	Approval of reserved matters following outline consent BE/18/17/PL for appearance, landscaping, layout & scale for a mix of up to 90 No. residential units, associated open space, landscaping, access & car parking	ApproveConditionally 12-12-17

Application reference BE/142/15/OUT was amended by a variation of condition application reference BE/18/17/PL, which amended the access to the site.

There are currently two undetermined applications, reference BE/29/19/PL and BE/37/19/PL, for the erection of 99 dwellings.

REPRESENTATIONS**REPRESENTATIONS RECEIVED:**

Bersted Parish Council
No objection.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS**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:
Within Built up Area Boundary.

DEVELOPMENT PLAN POLICIES

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

AHSP2 AH SP2 Affordable Housing

INFSP1 INF SP1 Infrastructure provision and implementation

[Bersted Neighbourhood Plan 2014 Policy HDQ4](#) Housing mix

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.

- 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 relevant policies in the Bersted Neighbourhood Plan 2014-2029 have been taken into account in the determination of 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 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 Clause 3.3 of the S106 Agreement to ensure that the registered provider for affordable housing will not be bound by obligations other than the affordable housing provisions. The Obligation at 3.3 currently states that it shall be enforceable against the Owners' successors in title save that individual owners or occupiers of the Affordable Housing Units shall only be bound by and subject to the obligations set out in paragraph 1 of Schedule 2. This would be amended with an additional clause stating that the affordable housing provider shall only be bound by relevant obligations in Part 1 of Schedule 4 which relates to affordable housing. The other obligations would remain the responsibility of the other parties to the S106 Agreement. This 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 and Policy HDQ4 of the Bersted Neighbourhood Plan.

Part 1 of Schedule 4 is also proposed to be modified to a) ensure mortgage provisions meet lenders standards to ensure registered providers can charge units at Market Value Subject to Tenancy valuation (MVST), and b) that they can ensure any future purchasers of the affordable units will not be bound by the affordable housing obligation. These proposed amendments would ensure that the mortgagee in possession clause is up to date with current legislation and guidance and would not impact on the provision of the agreed quantum or tenure mix of the affordable housing to be provided on the site, thereby according with Policy AH SP2 of the Arun Local Plan and Policy HDQ4 of the Bersted Neighbourhood 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