

Recommendation Report for Removal of a Planning Obligation

REF NO: BN/60/20/PO

LOCATION: Pollards Nursery
Lake Lane
Barnham
PO22 0AF

PROPOSAL: Application to modify a Planning Obligation dated 03/08/2013 under reference APP/C3810/A/13/2193942 (BN/16/12/) relating to Clause 2.24 to replace obligation with an agreement for a financial contribution.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	This planning obligation (PO) is to modify the s106 Agreement on BN/16/12 to enable the removal of the requirement for the provision of bus shelters and Real Time Information for at the existing bus stops on Lake Lane, Barnham; and for a contribution of £15,000 to be made towards improvements to cycling facilities between Yapton and Barnham. A Deed of Variation has been prepared.
SITE AREA	The residential development on land at the former Pollards Nursery site (now as Ashdown Vale) covers approximately 6.2 ha.
TOPOGRAPHY	Predominantly flat.
TREES	A significant belt of trees lies on the west boundary and a number of trees on the north boundary are protected by a Tree Preservation Order. A number of trees have been felled in accordance with approved plans.
BOUNDARY TREATMENT	Vegetation on north boundary adjoining residential properties to the north. There is a mature tree-lined boundary to the west boundary which includes a belt of Leylandii, some of which have been removed due to wind damage. The east boundary is adjoined by glass houses; and the railway line is located immediately south of the site.
SITE CHARACTERISTICS	The access lies approximately 950m to the east of Barnham village centre, south of Lake Lane. To the east, the site is bounded by glasshouses associated with Pollards Nursery. To the south, the site is bounded by the railway line and to the west, by former agricultural land which was allowed at appeal for the development of 75 dwellings, which is being developed. The site was previously part of a horticultural business (former Pollards Nursery) and it was occupied by glasshouses that were built in the 1950s/60s, with associated hardstandings and structures.

CHARACTER OF LOCALITY

The development of 107 houses on the Ashdown Vale estate is virtually completed apart from minor groundworks to the play areas and public open space.

The site is on the east edge of Barnham. There are some residential properties to the north of the site and a newly completed housing estate west of the site but the area is generally semi-rural in nature and character and typical of areas close to the edge of settlements.

RELEVANT SITE HISTORY

BN/51/16/RES	Approval of reserved matters following outline consent BN/16/12 & BN/21/14 for appearance, landscaping & scale for erection of 107 dwellings, car parking including garages, internal access roads, footpaths, parking & circulation areas, hard & soft landscaping, formal & informal play areas & public open spaces, attenuation basins, sewage treatment plant & other associated infrastructure & engineering	ApproveConditionally 22-09-17
BN/52/16/RES	Approval of reserved matters following outline consent BN/16/12 & BN/21/14 for appearance, landscaping & scale for erection of 107 dwellings, car parking including garages, internal access roads, footpaths, parking & circulation areas, hard & soft landscaping, formal & informal play areas & public open spaces, attenuation basins, sewage treatment plant & other associated infrastructure & engineering - Duplicate application of BN/51/16/RES	ApproveConditionally 02-03-18
BN/21/15/RES	Approval of reserved matters following outline consent BN/16/12/ for the construction of 107 No. residential dwellings with associated internal access roads, footpaths, boundary treatments, attenuation ponds, pumping station, landscape & open space (including allotments).	ApproveConditionally 02-12-15
BN/16/12/	Outline application with some matters reserved for a development of up to 107 no. residential units (this application is a Departure from the Development Plan)	Refused 22-11-12 Appeal: Allowed+Conditions 17-10-13

Outline permission (BN/16/12) was allowed on Appeal, and amended by s73 application BN/21/15 which removed two small sections of land from the development site and the red edge boundary.

The main issue at Appeal was the effect on the character and appearance of the rural area having regard to national and development plan policies in respect of development in the countryside and the delivery of new housing.

The Inspector concluded that the development did not comply with policies relating to development outside of defined development boundaries, but in the absence of a 5 year land supply these policies were not considered to be up-to-date and the presumption in favour of sustainable development applied. That having regard to paragraph 14 of the NPPF, there would be a benefit in terms of a contribution to housing supply, some local surface water drainage improvement and the potential for further investment in the horticultural business. The encroachment into the countryside was not found to be harmful to the character and appearance of the rural area. The adverse impact of approving the scheme did not outweigh the benefits.

Two duplicate reserved matters applications were submitted: BN/51/16/RES and BN/52/16/RES. Amendments were made to both applications, which comprised changes to the house types, the removal of the foul water treatment plant and its replacement with public open space; a revision to the LEAP and the submission of additional technical details, including information on individual items of play equipment; and the removal of Leylandii trees adjacent to the boundary with 49 Nightingale Lane and their replacement with Alder trees; but retained the number of houses at 107 as approved. Following the approval of BN/51/16/RES on 22nd September 2017, further amendments were made to BN/52/16/RES, which comprised minor layout changes to the configuration of development, due to changes in a number of house types. The development has been constructed generally in accordance with the plans listed under BN/52/16/RES approved on 2nd March 2018 and the associated discharge of condition approvals.

REPRESENTATIONS

No objection.

It is understood the funds cannot come direct to the Parish Council as this was pre CIL introduction and therefore happy for them to be spent on the specific cycle scheme mentioned as in time it will hopefully benefit residents if other routes can be built.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted and issues addressed in the Conclusions section below.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

LOCAL HIGHWAY AUTHORITY:

No objection to replace the obligation with a contribution of £15,000 towards improved cycle infrastructure between Barnham and Yapton. The variation of the s106 Agreement has been the subject of discussion between the developer and WSCC. The original obligation required shelters and real time information at two bus stops nearest the site. No party has agreed to take on the long term maintenance responsibility for the shelters; WSCC do not as a point of principle adopt and maintain shelters. None of the nearby bus services are understood to currently operate with that infrastructure necessary to ensure real time screens would work. The frequency of current bus services (aside from the fact that some services are presently running a reduced operation) are such that the inclusion of real time screens would have very limited benefit. On balance, a contribution towards improved cycle infrastructure between Barnham and Yapton is considered to offer a better solution.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted and issues addressed in the Conclusions section below.

POLICY CONTEXT

Designation applicable to site:

Within the Built up Area Boundary (BUAB) in the Arun Local Plan.

DEVELOPMENT PLAN POLICIESArun Local Plan 2011 - 2031:

DDM1	D DM1 Aspects of form and design quality
DSP1	D SP1 Design
QESP1	QE SP1 Quality of the Environment
SDSP2	SD SP2 Built-up Area Boundary
TDM1	T DM1 Sustainable Travel and Public Rights of Way
TSP1	T SP1 Transport and Development

Barnham & Eastergate Neighbourhood Plan 2014 Quality of design

POLICY ES5

Barnham & Eastergate Neighbourhood Plan 2014 Footpath and cycle path network
POLICY GA2

Barnham & Eastergate Neighbourhood Plan 2014 Contributions to maintain and improve the network
POLICY GA3

PLANNING POLICY GUIDANCE:

NPPDG	National Design Guide
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

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 and policies within them will be considered in determining planning applications. Made NDP policies will be considered alongside other development plan documents including Arun District Council's Local Plan.

Barnham and Eastergate Neighbourhood Plan (2014-2029) was made in July 2014. Relevant policies have been taken into account and are addressed in the Conclusions section of this report.

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 to modify the s106 Agreement imposed on planning permission BN/16/12 to enable the removal of the requirement for the provision of bus shelters and Real Time Information (RTI) at existing bus stops; and for a contribution of £15,000 to be made towards improvements to cycling facilities is considered to comply with relevant transport policies in Development Plan policies in that a contribution is being made to enable the residential development at Ashdown Vale to link with the wider cycle network in and around Barnham and Yapton.

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 principle of the development was established when the Inspector allowed the appeal into the outline application (BN/16/12) for 107 houses (including 30% affordable provision), which was followed by an approval for reserved matters (BN/21/15).

CONTRIBUTION TOWARDS PUBLIC TRANSPORT

Following an approach from Redrow Homes, the Local Highway Authority (LHA) reviewed the passenger transport obligation in the s106 Agreement imposed on BN/16/12/. The LHA assessed whether or not the bus shelters and real time information for passengers were required to be installed at bus stops on Lake Lane.

The proposal is no longer to provide a developer contribution towards the provision of shelters and real time passenger information at bus stops in the vicinity of the site. Due to the very limited number of local bus services the real time passenger information and bus stop infrastructure obligation is not appropriate or required. There are difficulties in securing on-going responsibility to maintain the bus shelters. As the LHA does not adopt or maintain these, the Parish Council or the District Council would be required to take on future maintenance. It is understood the District Council engineers no longer adopt bus shelters, but Barnham and Eastergate Parish Council could adopt the shelters. The Parish Council confirmed it does not intend to adopt the shelters. As neither the Parish nor the District Council wish to adopt or maintain shelters the original obligation needs to be varied. The proposal to no longer enhance bus stops through provision of shelters and real time passenger information, is acceptable. The existing bus stops along Lake Lane would be retained.

The developer contribution towards bus shelters and real time passenger information should be utilised alternatively to improve the local cycle network between Barnham and Yapton, and this is supported by the Local Planning Authority and the LHA. The original application was submitted in 2012 and permitted at appeal in 2013. The 2012 scheme was permitted on the basis of information available at that time. The cycling improvements were not known when BN/16/12/ was being considered.

CONTRIBUTION TOWARDS PROPOSED CYCLE IMPROVEMENTS

Details of the cycle improvements are contained in the West Sussex Walking and Cycling Strategy 2016-2026; and the contribution of £15,000 would be used towards scheme ID number 82 - Yapton to Climping. Final scheme costs have not been determined. The expectation is the contribution towards the cycle scheme is in lieu of costs associated with works included in the s106 Agreement (bus shelter and real time information screen). Effectively, the contribution would be no more than the cost of secured works. The works have not commenced; and this is subject to detailed design and full funding being available.

The scheme forms part of a wider network of cycle routes, some of which have been constructed (e.g. Barnham to Fontwell) or have funding or contributions from other developments (e.g. AL/61/13 - Land at Nyton Road and Northfields Lane and Land off Fontwell Avenue - includes an obligation to provide £250,000 towards the Westergate Link). The provision of an additional link between Barnham and Yapton would form part of this wider network. The provision of funding towards this link assists in encouraging further cycle use and enhance the opportunity to promote sustainable transport modes and prioritise walking and cycling. The contribution and cycle scheme comply with the NPPF and CIL tests: i.e. 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 amendments to the s106 Unilateral Undertaking are covered in the draft Deed of Variation. The proposal to no longer provide shelters and the real time passenger information existing bus stops on Lake Lane, but to invest the developer contribution into the local cycling network complies with the transport policies in the Development Plan.

DEED OF VARIATION

A Deed of Variation is required to amend the s106 Unilateral Undertaking, which is dealt with as part of this PO application to ensure the developer contribution would be used to improve the local cycle network between Barnham and Yapton; and no longer be used to provide the shelters and real time passenger information on the existing bus stops on Lake Lane.

To enable contribution to go towards cycle improvements between Yapton and Barnham clause 2.24 of the s106 Agreement imposed on BN/16/12/ needs to be deleted in its entirety and be replaced with:

"Highways Contribution" means the sum of fifteen thousand pounds (£15,000) to be used towards improvements to cycling facilities between Yapton and Barnham'.

Clause 2.25 would need to be deleted in its entirety and be replaced with:

"Second Deed of Variation" means a deed to vary this deed dated 2020 between (1) Redrow Homes Limited (2) WSCC and (3) ADC'.

Clause 10 would need to be deleted in its entirety and be replaced with;

'10. Highways Contribution'.

'10.1 On completion of the Second Deed of Variation to pay the County Council the Highways Contribution'.

'10.2 The Highways Contribution shall be Index Linked'.

'10.3 If the Highways Contribution is not paid to the County Council on or before the relevant payment date, to pay to the County Council in addition Interest from the relevant payment date until the actual date of payment and any such interest shall be treated as part of the Highways Contribution'.

SUMMARY

The proposal to modify the s106 Agreement on planning permission BN/16/12 to enable the removal of the requirement for the provision of bus shelters and Real Time Information for passengers to use at the bus stops on Lake Lane, in Barnham; and for a contribution of £15,000 to be made towards

improvements to cycling facilities between Yapton and Barnham is acceptable. The proposal to make a contribution towards cycling facilities is in accordance with Policy D DM1, Policy D SP1, Policy T DM1 and Policy T SP1 of the Local Plan and Policy ES5, Policy GA2 and Policy GA3 of the Barnham and Eastergate NP.

It is recommended that this planning obligation application is approved and that the s106 Agreement is modified by means of a Deed of Variation, which has been drafted by the ADC Legal Services Team.

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