

Recommendation Report for Removal of a Planning Obligation

REF NO: BR/146/18/PO

LOCATION: Part of Bognor Regis School
Pevensey Road & Westmeads Drive
Bognor Regis

PROPOSAL: Application to remove planning obligation dated 02/08//2011 under planning reference BR/120/11/ relating to Affordable Housing Contribution.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	As above.
SITE AREA	Total of 817 sq. m
SITE CHARACTERISTICS	Two separate sites each comprising a two storey dwelling with attached garage and off-street parking. Both dwellings are of a similar style and appearance but are in practice about 195m apart on different sides of a School playing field.
CHARACTER OF LOCALITY	Predominantly residential but on the edge of a school playing field.

RELEVANT SITE HISTORY

BR/51/13/DOC	Application for approval of details reserved by conditions 3 (details of screen walls) and 4 (tree planting) following planning application BR/298/12/	DOC Approved 19-03-13
BR/298/12/	Application for Approval of Reserved Matters following Outline Application BR/120/11 for 2no single dwellings on two seperate sites	ApproveConditionally 25-02-13
BR/120/11/	Application for Outline Planning Permission with some matters reserved for 2No. single dwellings on two separate sites on surplus land at The Regis School.	App Cond with S106 08-09-11

See Conclusions section.

REPRESENTATIONS

REPRESENTATIONS RECEIVED:

Bognor Regis Town Council

"Objection - Members were of the opinion that as the S106 agreement was acceptable at the time permission was granted, the terms should be enforced."

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS

Planning and Housing Strategy

CONSULTATION RESPONSES RECEIVED:

ADC HOUSING STRATEGY & ENABLING MANGER: Raises no objection to the loss of this affordable housing contribution.

ADC LEGAL SOLICITOR: The advice given is legally privileged and cannot be published in full. The following is a brief summary of the advice:

- * It would appear that the Developer purchased the Property and, therefore, should have been aware of the Undertaking;
- * As the Undertaking was given under Section 106 it runs with the land and is enforceable against the Developer and, if the Council wished, anybody who purchased from the Developer;
- * At the time the Undertaking was made it was appropriate to include an affordable housing contribution;
- * Subsequently the Planning Practice Guidance changed and the Council's Affordable Housing Policy now provides that: "The Council will not apply its Affordable Housing Policy on developments between 1 and 10 residential dwellings.";
- * Therefore, if the Planning Application had been made today, there would have been no requirement for an affordable housing contribution; and
- * There is case law that ruled that the test for the removal or variation of a planning obligation was whether, at the time of the application, it still served a useful planning purpose.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted.

POLICY CONTEXT

Designations applicable to site:

Within the Built Up Area Boundary;
Class C Road;
No Public Sewer; and
Pagham Harbour Zone B.

DEVELOPMENT PLAN POLICES

AHSP2 AH SP2 Affordable Housing

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework

SUPPLEMENTARY POLICY GUIDANCE:**POLICY COMMENTARY**

The Development Plan consists of the Arun Local Plan 2011-31, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

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.

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.

There are no relevant Bognor Regis Neighbourhood Development Plan policies.

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 conflict with relevant Development Plan policies in that it would have a materially adverse effect on the provision of affordable housing contributions.

OTHER MATERIAL CONSIDERATIONS

The following recent planning decisions are important material considerations in this case:

AW/314/17/PO & WA/5/18/PO

In both of these cases, the Council accepted that although the s.106 deed for an affordable housing contribution was contractually enforceable, the affordable housing payment would not comply with current policy. In these cases, it was also noted that the applicant could simply re-apply for the same development to get a planning permission freed from a s.106 deed concerning affordable housing. However, this would not apply to the current application as the two houses in question have been completed.

LU/78/18/PO

This is a very similar case where the dwelling had been completed and the applicant wished to not pay the affordable housing contribution. This was refused in June 2018 on the grounds that the original obligation still served a planning purpose and was reasonably imposed at the time that the corresponding planning application ref LU/42/14 was determined. In that case, the applicant could not simply re-apply

for the same development to get a planning permission freed from a s.106 deed concerning affordable housing since the development had already taken place.

CONCLUSIONS

SITE HISTORY:

These houses were granted outline planning permission in September 2011 with reserved matters consent following in February 2013. The permission was subject to the payment of an affordable housing contribution of £4,416 plus a legal monitoring fee of £150 payable on commencement of development. The dwellings have been completed but these sums have not been paid.

It is understood that the original applicant was West Sussex County Council (WSCC) and that the land was sold with permission to the current applicants Farndell Builders (Sussex) Ltd who then successfully applied to discharge the relevant planning conditions. The applicant developer then implemented the planning permission.

The Developer implemented the planning permission but failed to make payment of the affordable housing contribution or the monitoring fee on or before the commencement of the Development or at any other time. The full sum of £4,566 is therefore outstanding. The developer has stated that it was their understanding that the Section 106 fees had been paid at the time of the planning permission by WSCC.

The applicant is noted to be a developer albeit a small scale developer but who, according to their website, "specialise in New Build and Extension/Renovation/Conversion projects and carry out contracts with a value of anywhere from £20,000 to £2,000,000". It is therefore considered likely that they would have been aware that an Undertaking under Section 106 runs with the land and, therefore, they are liable to comply with it.

LEGISLATION:

The relevant legislation is Section 106 of the Town and Country Planning Act , 1990 ("section 106"), which provides at subsection (3) "Subject to subsection (4) a planning obligation is enforceable by the authority identified in accordance with subsection 9(d)-

- a. Against the person entering into the obligation ; and
- b. Against any person deriving title from that person.

Subsection (4) states that "The instrument by which a planning obligation is entered into may provide that a person shall not be bound by the obligation in respect of any period during which he no longer had an interest in the land."

The Council is an authority identified in the Unilateral Undertaking as an authority which has the power to enforce the obligations.

The Government's Planning Practice Guidance, on Planning Obligations, Published on 19th May 2016, provides that on sites of 10 dwelling units or less:

"Some planning obligations may still be required to make a development acceptable in planning terms. For sites where a threshold applies, planning obligations should not be sought to contribute to affordable housing or to pooled funding 'pots' intended to fund the provision of general infrastructure in the wider area. Authorities can still seek obligations for site specific infrastructure - such as improving road access and the provision of adequate street lighting - where this is appropriate, to make a site acceptable in

planning terms. They may also seek contributions to fund measures with the purpose of facilitating development that would otherwise be unable to proceed because of regulatory or EU Directive requirements."

SUMMARY:

The proposed discharge of the obligation would be unreasonable. The development has been completed and the affordable housing contributions are therefore due. The obligation was signed when contributions were sought in accordance with adopted policy which had been tested at appeal and held to be acceptable on other cases (including on LU/42/14, which is referenced elsewhere in this report in respect of LU/78/18/PO).

Similar Agreements have been discharged prior to commencement of the development which is outside of the Obligation payment trigger point. This point in time has been passed in this particular case and removal of the obligation would therefore set an unreasonable precedent. Much of the money derived from these contributions has already been spent on provision of affordable housing in the District.

It is considered that in this case, at the time of the application, the planning obligation in question still served a useful planning purpose.

The lack of contributions is enforceable and it is recommended that the discharge of the S.106 Planning Obligation is refused. The applicant could not simply re-apply for the same development to get a planning permission freed from a s.106 deed concerning affordable housing since the development has already taken place.

A unsigned draft deed of variation accompanied the application.

RECOMMENDATION:

It is therefore recommended that the application is refused for the following reason.

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

REFUSE

- 1 The original obligation still serves a planning purpose and was reasonably imposed at the time that the corresponding planning application BR/120/11 was determined.